

*Excerpts from Testimony.*

For Pittsburgh Plate Glass Company;  
and W. A. Gordon:

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HAZLEGROVE, SHACKELFORD & CARR,  
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WILLIAMS, MULLEN, POLLARD & ROGERS,  
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LELAND HAZARD, CYRUS V. ANDERSON and  
RICHARD C. PACKARD,  
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For Carolina Mirror Corporation;  
and Edd F. Gardner:

J. H. WHICKER, JR.,  
WHICKER & WHICKER,  
North Wilkesboro, N. C.

HOMARD C. GILMER, JR., A. M. HARMAN, JR.,  
GILMER, HARMAN & SADLER,  
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Pulaski, Virginia.

Galax Mirror Company, Inc.; Mount Airy Mirror  
Company and J. A. Messer, Sr.:

FRANK W. ROGERS,  
WOODS, ROGERS, MUSE & WALKER,  
301 Boxley Bldg.,  
Roanoke 4, Virginia.



**SUPREME COURT. U. S.**

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1958**

**No. 489**

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**PITTSBURGH PLATE GLASS COMPANY,  
PETITIONER,**

**vs.**

**UNITED STATES OF AMERICA.**

---

**No. 491**

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**GALAX MIRROR COMPANY, INCORPORATED,  
MOUNT AIRY MIRROR COMPANY AND  
J. A. MESSER, SR., PETITIONERS,**

**vs.**

**UNITED STATES OF AMERICA.**

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**ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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**NO. 489 PETITION FOR CERTIORARI FILED NOVEMBER 3, 1958**

**NO. 491 PETITION FOR CERTIORARI FILED NOVEMBER 4, 1958**

**CERTIORARI GRANTED DECEMBER 15, 1958**

*Excerpts from Testimony.*

H. GRAHAM MORISON and SAMUEL K. ABRAMS,  
MORISON, MURPHY, CLAPP & ABRAMS,  
The Pennsylvania Building,  
Washington 4, D. C.

Stroupe Mirror Company:

W. P. SANDRIDGE,  
WOMBLE CARLYLE, SANDRIDGE & RICE,  
Wachovia Bank & Trust Co. Bldg.,  
Winston-Salem, N. C.

A. LINWOOD HOLTON, JR.,  
State and City Building,  
Roanoke, Virginia.

Virginia Mirror Company, Inc.:

PATRICK A. GIBSON, JOSEPH C. CARTER, JR., and  
JOSEPH A. HOWELL, JR.,  
HUNTON, WILLIAMS, GAY, MOORE & POWELL,  
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Richmond 12, Virginia.

HANNIBAL JOYCE,  
JOYCE & STONE,  
46 West Main Street,  
Martinsville, Virginia.

For Weaver Mirror Company, Inc.:

C. CARTER LEE,  
LEE & HUTCHERSON,  
Main Street,  
Rocky Mount, Virginia.

AND THEREUPON the following Proceedings were had:

The Court: Are the parties ready in the case of United  
States of America vs. Pittsburgh Plate Glass Company,  
*et al?*

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**Excerpts from Testimony.**

**UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF VIRGINIA,  
ROANOKE.**

**UNITED STATES OF AMERICA**

**vs.**

**PITTSBURGH PLATE GLASS COMPANY;  
CAROLINA MIRROR CORPORATION;  
GALAX MIRROR COMPANY, INC.;  
MOUNT AIRY MIRROR COMPANY;  
STROUPE MIRROR COMPANY;  
VIRGINIA MIRROR COMPANY, INC.;  
WEAVER MIRROR COMPANY, INC.;  
EDD F. GARDNER, J. A. MESSER, SR.,  
and W. A. GORDON**

**Criminal Action  
No. 5790**

This Matter came on regularly for hearing on this the 18th day of November, 1957, before Honorable JOHN PAUL, United States District Judge, sitting with a jury duly empaneled and sworn to try the Cause.

The following appearances were noted:

**2**

**Appearances:**

**For the Government:**

**JOHN STRICKLER, United States Attorney, and THOMAS  
J. WILSON, Assistant United States Attorney;**

**(and)**

**SAMUEL KARP, RAYMOND M. CARLSON and P. JAMES  
UNDERWOOD,**

**Attorneys, Department of Justice, Antitrust Divi-  
sion, Washington, D. C.**

*Motions.*

Mr. Karp: The Government is ready, your Honor.

Mr. Anderson: And the Defendants are ready, your Honor.

The Court: All right, counsel, you may proceed. First, the Clerk will call up a jury.

Mr. Gilmer: In the interest of saving time and confusion, we would like to have it understood with the Court and Government counsel, if they do not object, that any objections and motions, or any other similar matters brought to the attention of the Court by any one defendant will inure to the benefit of all defendants unless otherwise indicated.

The Court: I do not think the Court itself could agree to that. It might very well be that an objection was very pertinent to one defendant, but not to the other.

Mr. Gilmer: Where it had anything to do with more than one defendant, or if it later turned out to be pertinent, rather than for everybody to be getting up and objecting, I thought it would save time.

The Court: That will be all right.

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Mr. Gilmer: Of course, subject to materiality or pertinency, or anything of that sort.

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Thereupon, the Court and Counsel retired to Judge's Chambers for a conference on the record, out of the hearing of the Jury Panel, and the following proceedings were had:

The Court: What is it, gentlemen? What did you have on your mind, Mr. Joyce?

Mr. Joyce: If your Honor please, the Defendant, Virginia Mirror Company, desires at this time to move that the indictment be dismissed for the following grounds: That the indictment fails to state an offense under the laws

*Motions.*

of the United States, and, two, that the indictment is duplicitous, and, three, that the Court lacks jurisdiction to try this indictment for the reason that a jury trial is denied this Defendant as to the continuance of any alleged conspiracy.

The Court: What was that last ground?

Mr. Joyce: That the Court lacks jurisdiction to try this indictment for the reason that the jury trial is denied this Defendant as to the continuance of any alleged conspiracy.

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The Court: What do you mean by that?

Mr. Joyce: If your Honor please, that is brought about by the amendment of the statute nine months after the beginning of the alleged conspiracy—the statute was amended—so as to change the penalty. It therefore gives to the statute the *ex post facto* color. I would like for the Court, if you will permit, to hear Mr. Gibson, who has done research work on that question.

The Court: Gentlemen, this indictment was returned in March and you wait here until this day that has been set for trial and come in to attack the indictment. If there were no other justification for overruling your motion, that would be sufficient. This is a gross delay in making an attack on the indictment.

Mr. Joyce: That matter was not apparent at the beginning. By virtue of subsequent research, we have come to this conclusion, and certainly if it is going to be a part of the record it will have to come in now. The motion, as we see it, is seasonable.

The Court: The motion is overruled.

Mr. Gibson: Your Honor, would you hear my reference to the Supreme Court decision?

The Court: Yes. I will hear what you have to say.



*Motions.*

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Mr. Gibson: In that case, as I understand it, your Honor, the United States Supreme Court passed on the matter and upset the conviction after the trial. We are here raising a fundamental constitutional objection prior to the beginning of this trial. I have no apology for my client as to time that has gone by. I expressed very strongly my personal apology for my inability really to resolve in my own mind to see this problem. It is the kind of thing that you look for and look for and you know it is there, and when you finally see it, it is just as clear as can be what the Supreme Court held. It was that you cannot be convicted under a higher penalty for a previous crime. The Supreme Court was simply positive about that under the *ex post facto* protection.

We do not have the opportunity to try in this case, under this indictment, whether we committed, to put it simply, a \$50,000 offense or not. We are charged with an offense beginning in 1954 and continuing. We can't even have a jury verdict on the issue as to whether or not we did commit the crime punishable by the higher offense.

The Supreme Court put its finger on the very question as to whether or not the Government could

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say there would be no prejudice to the Defendant if he were sentenced—if the Defendant were sentenced—in line with the original statute.

The Supreme Court said that is no answer to the constitutional protection because *ex post facto* protection does give you the right to the trial under the standard of punishment as of the period of the time of the crime. We are charged with a crime under two statutes with no separation. We do not say to your Honor that here is some kind of wrinkle we have dragged out of the law books that lets us go scott free from any trial. The Government can give us a fair trial by a two count indictment. It is settled in



*Motions.*

the decision of the Eighth Circuit the Government can plead a single crime in two versions. The Government can do that now. The statute of limitations is fully open. They can plead a 1954 crime against us and for convenient term of reference a 1956 crime against us and we would have a chance for a verdict by the jury. We cannot possibly have it. If there were any way, your Honor, by which we could get special verdict or interrogatories and to have a jury verdict as to whether we are guilty of the \$50,000 offense, Virginia Mirror would not make this motion to this Court.

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We understand we have exhausted—that is one thing we have spent a great deal of time on—looking to see whether there was such a thing in federal criminal practice. The Eighth Circuit has also laid down the proposition that the Federal Court in a criminal case is without authority to have a special verdict or interrogatories to the jury. We cannot have a fair trial, your Honor. There is no possibility.

The Court: You raised this same question or substantially the same question during one of the various hearings this summer before me.

Mr. Joyce: Your Honor, we filed a motion for particulars, still struggling to find out what this indictment meant. All we had was the reliance by the government on the presumption of continuance, and that brings before you the very difficulty that we cannot have a trial. We have a presumption that the Government relies on, that we continued to violate the law into the 1956 period, and we can't get a trial on it. We can't get a verdict on it.

We think it is fundamental. If time is to be saved, sir, if the upper court would disagree—if you do not see what seems to us an unanswerable absence of constitutional protection to us, and if the upper court were to disagree with that view—Heaven

**Motions.**

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knows there would be the vastest amount of time and expense and effort wasted. We would have to start all over again. The Government would have to give us our chance of pleading 1954 and 1956 so that we can have the opportunity for a jury trial which we do not have, sir.

The Court: Do you have anything you want to say, Mr. Karp?

Mr. Humrickhouse: If your Honor please, on behalf of one other Defendant, may I speak before Mr. Karp does?

The Court: Yes, but I do not want any prolonged argument from all of the twenty-some counsel.

Mr. Karp: Do you have the memorandum?

Mr. Gibson: I have the citation. The proposition that it cannot be an *ex post facto* conviction, 301 U. S. 397.

The Court: Now, Mr. Humrickhouse, what do you wish to say?

Mr. Humrickhouse: The matter which your Honor just mentioned points up to me the necessity of making this motion to you at this time, and of being certain that we have not tried to make the point during the progress of our many hearings before you that your Honor has not ruled upon with definiteness. I think

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that is the real reason that we should bring it to your attention at this time so that if there is a conviction and the matter is appealed we would not be criticized of taking advantage of something before the Court of Appeals that we had not properly argued before you. For that reason we have written out this motion so that we would like to incorporate it as a part of the record on behalf of the Pittsburgh Plate Glass Company, and W. A. Gordon. It is exactly the same grounds. The point was mentioned to your Honor, I know on several times—we had not mentioned it before—I want to call your Honor's attention to this in view of your Honor's first remarks about the lateness of the filing of this.

**Motions.**

The Court should take notice of lack of jurisdiction or of the failure of an indictment to state an offense at any time, no matter who may be guilty of neglect. We say earnestly to your Honor that here is a matter, if the indictment is wrong now, then your Honor ought not to put anyone on trial. Whether we have been guilty of gross delay, which I do not think we have, your Honor should not put any Defendant in that position, and I don't believe your Honor will.

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Mr. Gilmer: In order to save time under the agreement, it is understood that all Defendants join in this motion.

The Court: All right. Is there anything you wish to say, Mr. Karp?

Mr. Karp: Yes, your Honor. This very small matter is an attempt by Defendants to make a mountain out of a little molehill. The section 1 of the Sherman Act had, until I believe some time in 1956, provided for a penalty of \$5,000 and/or one year imprisonment. Congress in 1956 amended the penalty provision merely by striking out the words "\$5,000" and inserting therein "\$50,000." Now, your Honor, that merely goes to the penalty. It does not go to the existence of the crime. It cannot be ex post facto law, because it did not create a new crime. It merely provided for a broader range of penalty within the discretion of a court. Whether the parties here should be penalized under one or the other would appear from the trial and from the facts and from the proof. But certainly a crime has been alleged. It cannot be said that when Congress changed the penalty, it eliminated the crime. That is what the Defendants are here saying. They are saying that when Congress changed the penalty from \$5,000 to

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\$50,000, that these defendants therefore were immune from their unlawful acts, and that is not the law, your Honor, I submit.

**Motions.**

Mr. Gibson: May I reply, your Honor?

The Court: Yes, sir.

Mr. Gibson: The Supreme Court went this far in the Lindsay case that I referred to, 301 U. S. 397. The only change in the law at that time, sir, and that conviction was upset after trial, was to change the brackets of punishment so that the previous maximum should be mandatory punishment. The Supreme Court held that regardless that the Court had authority to impose the maximum penalty prior to the amendment of the Act, by that change the Defendant was subject *ex post facto* to a higher standard of punishment: That, the Court said, was prohibited by the Federal Constitution as to state laws and the similar prohibition as to Acts of Congress is contained in Article I, Section 9. We are not objecting that there is a different crime. The Government could have charged us with the 1954 crime, or they could have charged us with the two versions of the one crime and we would have had the opportunity for a trial. The Court in the Lindsay case made it very clear that discretion on the court as to imposition of the

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increased sentence cannot cure the constitutional defect. We can not have the opportunity for a trial by jury, sir.

**22**

Mr. Karp: The cases do not hold, your Honor, that the change of the penalty is *ex post facto*.

Mr. Gibson: I beg your pardon, sir, but the Supreme Court so holds. Have you read the case?

Mr. Karp: Have you read all the cases?

Mr. Gibson: I have read the Supreme Court case.

Mr. Humrickhouse: Gentlemen, I have handed the court the case. It will be easy to find out if your statement is correct, Mr. Gibson.

Mr. Gibson: Thank you.



*Motions.*

The Court: I don't think that applies to the present situation. The only question there was the validity of a sentence imposed.

Mr. Karp: That is right, your Honor. The Department of Justice was certainly involved in the framing of the statute by Congress amending the law, and we have looked into it and we are certain that the position of defendant is invalid and is just a step for confusion and distortion.

The Court: All I see that case decided—of course, I didn't give it the prolonged study that I would under quieter circumstances—but it appears that all that case decided was that a court could not impose as a mandatory sentence one which had been proscribed by the legislature of the state following the commission

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of the crime.

Mr. Gibson: Sir, the court said that the penalty may not be increased after the crime. How are you, your Honor, going to impose a penalty, if there is a conviction, with the one verdict that can be rendered? How have we had a jury trial on the issue of guilt or innocence of the increased penalty statute?

The Court: The trouble is, Mr. Gibson, you are assuming that in a trial for a conspiracy, which this is, that there must be proof of the continuation of the conspiracy before there can be any conviction.

Mr. Gibson: No, sir.

The Court: You want the continuation of the conspiracy beyond the time when the statute was changed. The crime is in the entering into of the conspiracy.

Mr. Gibson: I have no quarrel with that and the government can so frame its indictment.

The Court: As I see it now, the penalty would be applicable, if there were conviction, which was proscribed by the statute at the time the conspiracy was entered into.

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Mr. Gibson: I cannot put any defense of the issue of the commission of a \$50,000 crime. I cannot. The government can frame its indictment so I could, but it did not. It joined the two together, so I can have

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only a verdict of innocent or guilty. You cannot impose a sentence on me, your Honor, with any jury trial that I have ever had an opportunity to have as to whether I was or was not guilty of a \$50,000 crime.

The government could have charged me in such a way that I could have that jury trial, but they did not so choose to frame the indictment.

Mr. Karp: Mr. Gibson is saying there are two kinds of crimes here, a \$50,000 crime and a \$5,000 crime. We say it is one crime. We say it is one crime.

The Court: I understand. The motion is overruled.

Mr. Joyce: Your Honor, we would like to submit the written form of our motion for the record, with our objections, for the reasons stated.

The Court: All right.

(The motion referred to is as follows):

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Comes now the defendant, Virginia Mirror Company, Incorporated, and moves the Court to dismiss the indictment in this case on the following grounds:

1. That the indictment fails to state an offense under the laws of the United States.
2. That the indictment is duplicitous.
3. That the Court lacks jurisdiction to try this indictment for the reason that a jury trial is denied this defendant as to the continuance of any alleged conspiracy.



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The Court's attention is directed to the amendment to Section 1, Title 15, U. S. C., effective July 7, 1955, changing the penalty provisions of said Section.

Dated November 18, 1957.

Respectfully submitted,

VIRGINIA MIRROR COMPANY, INC.

/s/ By HANNIBAL JOYCE, of Counsel,  
46 West Main Street,  
Martinsville, Virginia.

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PATRICK A. GIBSON,  
JOSEPH C. CARTER, JR.,  
1003 Electric Building,  
Richmond 12, Virginia.

Counsel for Virginia Mirror Company, Incorporated.

Mr. Humrickhouse: On behalf of Pittsburgh Plate Glass Company and W. A. Gordon, I would like to file a motion for continuance on the ground that we have not had sufficient opportunity to complete the preparation of our defense.

Substantially, the grounds for the motion are the same as those argued before your Honor on October 28, 1957. However, we do have attached to it an affidavit showing the amount of work that has been done since that time by all, working overtime and to their capacity, and showing that they have done everything humanly possible to try and complete their studies by November 18th, today.

We could not do it, and we feel that we are being prejudiced by having to go into the trial. The affidavits fur-

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ther state, so far as Mr. Anderson's affidavit is concerned, that the origin of the project began on April 11, 1957, which was less than two weeks after the indictment was returned, and that it has continued throughout the entire summer.

We make this motion solely on behalf of Pittsburgh

Plate Glass Company and W. A. Gordon. The other defendants may join in or may not. We feel that we have been prejudiced by not being able to get the records, and we got them as soon as we could, and we earnestly call your Honor's attention to the affidavits which are attached to the motion for a continuance, they being the affidavits of Mr. Pearce, who is the partner of A. M. Pullen & Company, who has done the accounting work. I would like to call your Honor's attention briefly to what he says he has done.

The Court: Mr. Humrickhouse, I denied that motion not because you didn't have time at this time to get up your data, but because you delayed most of the summer in starting on it. I took Mr. Anderson's affidavit and analyzed it and I am sure it was accurate and it showed that you had done nothing practically until, as I recollect, about August or September to get ready for this trial. Your excuse was that you were hoping somebody was going to give you the information voluntarily.

Mr. Humrickhouse: Your Honor cannot blame us for hoping to try to obviate another hearing before your Honor. Your Honor warned us that we should not come in for hearings and there was no reason for us to make a motion for the pre-trial production of records if we could get them voluntarily.

We thought we were trying to expedite the matter rather than delay it. We don't believe that the evidence

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supports your Honor's conclusion that we were dilatory during the summer.

The Court: I think it does. I think I dictated my reasons for denying the motion when you were before me in Harrisonburg in October.

Mr. Morison: Your Honor, I would like to make a proffer on behalf of all of the defendants. I represent Mr. Messer and Galax Mirror and Mount Airy Mirror.

We state to the government here that all of the defendants will offer in evidence in this case in chief an accounting analysis of prices of plate glass mirrors made by the A. M. Pullen Company of Greensboro, North Carolina, which analysis has been explained in some detail by the affidavit of Pittsburgh Plate Glass in the motion for continuance which has just been handed to your Honor.

Your Honor, this accounting analysis consists of a tabulation of thousands of documents placed on the McBee key punch card; a copy of that card is well known in accounting circles. It is a card by which you can reduce down to a minimum the amount of information that you are trying to extract.

In these cards, from the material from underlying

documents relating to the prices, which were in the files of all the defendant companies, including the invoices and credit memoranda, ledgers and other accounting entries.

The defendants will offer in evidence the cards upon which the results of this extensive examination, as far as it has gone, have been tabulated under the direct supervision of this accounting firm.

It is our purpose, Mr. Karp, at this time to state that we have in Roanoke, available for examination and for testing by the government of the validity of the accounting method, to the extent that the government may deem it necessary, as far as our defendants are concerned, the

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underlying documents from which this data concerning our company are concerned, as follows:

1. Accounting copies of sales invoices;
2. Accounting credit memoranda;
3. Customers' orders;
4. Copies of sales invoices supporting cash payments;
5. Cash receipt journals;
6. Collection advices from Commercial Credit Corporation; and
7. The ledger cards from the general ledger.

We proffer these documents at this time to the

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government for its examination and we offer to deliver the documents to such places as the government may designate for such examination. Our documents are now housed in Room 437-438 in the Hotel Roanoke. We are authorized to make the same proffer, your Honor, on behalf of all these other defendants in the same terms and they will announce that they will enumerate after I have finished here the records from which their data has been drawn and that they too have the underlying documents here in Roanoke available to the government for its inspection and testing.

The law is well established, your Honor, and it is particularly applicable in these complicated fact cases of anti-trust, that where a factual analysis and presentation is based upon a large number of documents, made up of very detailed statements, and that analysis and summaries prepared in a manner which offers a reasonable guarantee to accuracy, may be offered in the place of the voluminous underlying documents, so long as the records themselves are made available to the opposing party.

**Motions.**

The witness making the summary is subject, of course, to cross examination and the accuracy of the summary can be checked by that cross examination.

In this case, the summary has been made by the A. M.

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Pullen & Company, a well known accounting firm—Certified Public Accounts.

Mr. Karp: May I interrupt? You are talking about the summaries or the cards?

Mr. Morison: The cards. Mr. R. B. Pearce, a member of the firm, is the man in charge of the preparation of these cards and he is available for cross examination by the government with reference to the details of the cards and the way this data was collected and compiled. He will be available for conference.

In Virginia, your Honor, the law is clear that such summaries are admissible so long as the underlying documents are made available for study and the citation on that is the *E. I. DuPont de Nemours vs. Universal Molded Products Corporation Case*, 191 Virginia 525. It is a 1950 case.

In the Federal Court, it is equally clear with particular reference to antitrust cases where this problem arises so many times.

The Court: What is the purpose of telling the Court all about this at this time? The Court cannot rule on evidence until it is tendered in court.

Mr. Morison: That is correct. We are not asking your Honor that you rule on an evidentiary question. We think we must under the ruling of the DuPont case make .

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the proffer in the presence of the Court.

The Court: Does the DuPont case say you must make the proffer in the presence of the Court?



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Mr. Morison: No, sir; it does not. I agree with you, sir. If I may conclude, I have finished, except to state that the Federal rule supports the Virginia rule announced in that case.

For the record, I suppose that these defendants would now like to enumerate for your benefit the documents which they have and where they are located.

Mr. Karp: How many documents do you have, Mr. Morison?

Mr. Morison: We have approximately 4000. That is the underlying documents upon which these cards were made.

Mr. Karp: Now you suggest to us that my two associates and I stop the trial and go over to the Roanoke Hotel and examine 5000 documents of yours alone?

Mr. Morison: Subject to your Honor letting me reply to that—I don't want to get into an argument; my purpose is not to argue with you. I wanted to state with accuracy what it is and where it is.

Mr. Karp: We will object. We want to reserve our objection to any proffer or admitting them in evidence.

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Mr. Morison: I would suggest for the record that these gentlemen put in now the identification of the documents that they have and where they are located.

Mr. Whicker: Your Honor, speaking for Carolina Mirror Company and Mr. E. F. Gardner—

Mr. Karp: I hate to interrupt. We object to their being identified at this time. It is completely out of order.

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The Court: I am not going to have all of them read a long speech like Mr. Morison. I am going to get into this trial.

Mr. Whicker: I am not going to make a speech. I will read the documents we have in Room 424, Hotel Roanoke.

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We have accounting copies of sales invoices filed numerically from October 1, 1954 to March 31, 1957, customer order files and pricing information for furniture manufacture customers from October 1, 1954 to March 31, 1957. The accounts receivable ledger cards for furniture manufacture customers from October 1, 1954 to June 30, 1957. The cash receipt journals from October 1, 1954, to June 30, 1957.

Mr. Gilmer: If Mr. Karp would rather have those records at any other place, we would be glad to deliver them anywhere he wants them. We understood from him that Hotel Roanoke would be satisfactory as far as documents are concerned.

Mr. Karp: I don't even have to answer that, I am sure, as to where you are going to have your documents.

Mr. Lee: On behalf of Weaver Mirror Company, we have in the Marshal's office in a little box the accounting copies of sales invoices filed numerically

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from January 1, 1953 to March 31, 1957. Customer order files and pricing information from January 1, 1953 to March 31, 1957, for furniture manufacture customers. Accounts receivable ledger cards for furniture manufacture customers from January 1, 1953 to March 31, 1957. Cash receipts journal from January 1, 1953, to June 30, 1957. They are available to Mr. Karp or any other Government representative at any time or anywhere he wants them.

Mr. Anderson: If your Honor please, speaking for Pittsburgh Plate Glass Company, we have available in Room 246, Hotel Roanoke, the following documents of the Pittsburgh Plate Glass Company, High Point, North Carolina, at Roanoke, Virginia, warehouses: First, furniture manufacture customer orders for plate glass mirrors for the period January 1, 1953 to March 31, 1957. Secondly, the sales invoices, or as we call them, order returns, cover-

*Motions.*

ing such sales of plate glass mirrors to furniture manufacturers for the same period.

We also have the accounts receivable ledger cards covering these transactions for the same period. Finally, we have the cash receipt books covering the same period. These are available for the Government's inspection at Room 246 at the Hotel or such other

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places as they may wish to inform us.

Mr. Holton: On behalf of Stroupe Mirror Company, we would like to state that the following records are available in the Courtroom or near the Courtroom this morning. They will thereafter be available to Mr. Karp at any reasonable time in Room 294 of the Hotel Roanoke.

The following documents: One, accounting copies of sales invoices filed numerically from October 1, 1954 to March 31, 1957. Two, customers' order files and production orders from October 1, 1954 to March 31, 1957. Three, accounts receivable ledger cards for furniture manufacture customers, from October 1, 1954 to June 30, 1957. Four, cash receipt journals from October 1, 1954 to June 30, 1957.

Mr. Gibson: If your Honor please, for the same reasons stated by Mr. Morison, I would like for Virginia Mirror to make the proffer of the following documents available now in the Marshal's office in this court building: One, a folder of remittance advices from our 1957 file. Two, ledger sheets or accounts receivable records, one pack for furniture manufacturers out of state, one pack for furniture manufacturers in Virginia. Three, four cash receipts journals, 1954 complete, 1955 complete, 1956 complete,

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1957 through June 30. Four, acknowledgements, three binders, 1955, 1956, 1957 through March 30.

Five, two binders of credit memos, 1954, 1955, and 1956 and 1957 through June 30. Six, eight binders of invoices,

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one for 1953, two for 1954, two for 1955, two for 1956, and one for 1957.

Seventh, and lastly, three files of correspondence, documents, inquiries, and so forth, from the Accounting Department for 1954, 1955, 1956.

For the record, I join in the motion for continuance.

• • • • •  
If your Honor please, may I ask whether it was the Court's ruling on my motion that my client is to be tried for a five thousand dollar offense?

The Court: I said as the matter now appeared to me, without going any further into the law, I don't see how I could impose a punishment greater than that which existed at the time the conspiracy was entered into, which was provided by the statute.

Mr. Gibson: I really didn't clearly understand, and I appreciate your Honor's explanation.

The Court: That is my present thought about it. I don't see how I could do anything else.

Mr. Gibson: If that is the basis of the indictment, I have no objection.

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The Court: The crime which you are charged with is the entering into of a conspiracy—I forget the date—but prior to the amendment of the statute.

Mr. Gibson: October, 1954.

The Court: If it is proved that you did enter into a conspiracy at that time, the crime was committed, if some overt act was done to prove it, then it seems to me that the punishment would have to be the punishment which the statute prescribed at that time. In other words, it could not be more. I don't see how it could be.

Mr. Gibson: If that is the charge on which I am being tried, sir, then I really have misunderstood the indictment for the purposes of my motion.

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I had understood the indictment to charge me with engaging in a conspiracy continuing after 1954 so as to be charging with the commission of a crime in the year 1956 without any way under that single count for a jury to render to your Honor a verdict as to whether I was guilty of a crime under that indictment, under the fifty thousand dollar offense or not.

The Court: What I have just said is my present thought, Mr. Gibson.

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Mr. Karp: I assume you are not now making the ruling on the amount of the punishment.

The Court: I am not now making a definite ruling on it, but that certainly is my present thought.

Gentlemen, we have about twenty-six jurors here. Under this statute, the offense is one which requires only eighteen qualified jurors, from which the twelve shall be selected, with three challenges, three peremptory challenges, with the right of the Court to grant additional challenges due to the multiplicity of defendants. I presume you would want two alternate jurors in this case, or enter into an agreement that should any juror become ill or unable to continue, that a verdict may be rendered by a lesser number. You can do either one of those.

Mr. Karp: We would prefer alternate jurors, your Honor.

Mr. Gilmer: That is all right with us, sir.

The Court: That means I have to have four more qualified ones, eighteen, and because the Rules of Criminal Procedure provide that in the selection of two alternate jurors you select four qualified men and each side has one peremptory challenge, that

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being in addition to the three which it had as to the original twelve, so we would have to have twenty-two qualified jurors. I have only 26 here.



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I don't know whether on *voir dire* some of those will find themselves disqualified. I have let two men go this morning, I will tell you frankly, because they told me that they had some knowledge of this case and they felt they would go into the case with some prejudice.

. . . . .

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Mr. Humrickhouse: So we might save time, I don't know whether we can or not, we have a number of subpoenas and the question of response to subpoena it seems to me ought to be taken up at this time. The Government has subpoenaed documents from all of the Defendants. I am sure each Defendant has some

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announcement about where the documents are and so forth. I don't know. Maybe there has been some agreement with Government counsel in some cases. There is one matter that I would like to dispose of particularly at this time. It is the subpoena which is outstanding against Mr. Karp on behalf of our clients for the production of certain records. We would like to know that they are in court prior to the impanelling of the jury. Likewise, we would like to move for the inspection of all of the documents which have been subpoenaed from the Government prior to the beginning of the trial.

Mr. Karp: Your Honor, of course the documents will be either here in the courtroom or in the Court House. They are all in the courtroom, I am told. The subpoena called for documents which the Government will introduce into evidence, and documents which were submitted to the Grand Jury, but which would not be introduced in evidence. Your Honor made oral rulings concerning that matter, and it was clear that of course the documents which will be introduced by the Government into evidence will be made available as they are introduced. The Court will rule as to any other matters which should come before

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the Court, or any other documents. What Mr. Humrickhouse is

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asking for now is for a complete discovery of the Government's case in advance, and they want all the documents which we are going to put in through all the witnesses right now, and to confuse the Government's case and to discover it in advance. That was not the ruling of your Honor, if you will recall. We object very strenuously to such suggestion.

Mr. Humrickhouse: We would like to know what his position is regarding responding to our subpoena to him, whether he has the documents and would let us see them now.

The Court: What documents are those?

Mr. Humrickhouse: Mr. Anderson has a copy of the memorandum. I would like for him to call to your Honor's attention what they are, if your Honor will permit.

Mr. Anderson: If your Honor please, on October 17, you entered an order which in relevant part states that the Court adjudged and ordered that the subpoena *duces tecum*, as limited by the Pittsburgh Plate Glass Company subpoena, be obeyed by said Samuel Karp, Attorney, Department of Justice, by the production on the 18th day of November, 1957, and then you gave this advance inspection at that time for some particularly designated

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telephone call charge tickets.

The Court: Did you get them?

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Mr. Anderson: Yes, sir; we did. What the subpoena called for comes into two categories:

First, books, papers, documents and objects (a) that have been presented to the Grand Jury; or (b) are to be

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offered as evidence in the trial of the defendants or any of them under the indictment.

That subpoena, as I stated in the hearing on the argument on October 17, was taken virtually verbatim from the subpoena *duces tecum* that was upheld by the Supreme Court in the *Bowman Dairy* case, 341 U. S. 214. As I said in that argument on the question that Mr. Karp there raised, the government does not have to disclose its case in advance of trial. No discovery is available to defendants.

It seemed to us, your Honor, that question was disposed of in *Bowman Dairy* because the subpoena, if I recall correctly, was upheld by the District Court, the Court of Appeals for the Seventh Circuit reversed, and in turn the Supreme Court upheld the ruling of the District Court in relevant part.

So I am not going to labor this point again, your Honor, but Rule 17(c) contemplates some discovery by its very inclusion in the Rules of Criminal Procedure. The United States Supreme Court in *Bowman Dairy* contemplates discovery in its decision.

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We say that Mr. Karp, by his position that any documents that he wishes to offer in evidence he can hold back documents until the last witness that may be relevant on the cross-examination by us of his first witness. That, sir, is trial by surprise, I believe.

I feel at this point if I recall the hearing at Harrisonburg on the 17th, that you felt sympathetic to our position when I made the point at that time.

The Court: But I overruled it, didn't I?

Mr. Anderson: No, sir. This is the one time that you granted a motion for us.

Mr. Karp: Your Honor, you granted the motion for pre-trial inspection of telephone records.

The Court: That is right.

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Mr. Karp: We had made a motion to quash a subpoena, and Pittsburgh Plate Glass cut down its subpoena. I stated that I had no objection to the subpoena as cut down, but I did object to any pre-trial or advance of trial submission.

Your Honor stated quite specifically in the transcript, and I have it marked, that the documents were to be available in the court. They were to be here. They were to be produced, but that they were not to be submitted to the defendants until the proper time and if anything should arise which would justify the calling

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for specific documents, your Honor would rule at that time, as it would ordinarily. That is quite clear in the transcript. I have it marked here. It indicates that Mr. Anderson himself recognized that quite clearly.

The Court: What he wants to know now is have you got the documents available?

Mr. Karp: Yes.

Mr. Anderson: Will you produce them today?

Mr. Karp: What do you mean "producing" them?

Mr. Anderson: Produce them for our inspection, sir.

Mr. Karp: No.

Mr. Anderson: We have an issue, your Honor.

The Court: I think I resolved that issue before.

Mr. Anderson: I beg leave of the Court to hand up a copy of the order you entered that day.

(The document was handed to the Court.)

Mr. Karp: It is quite clear from the order itself that inspection was limited to certain specified documents.

The Court: It seems to turn on the interpretation of the word "production." What I meant was to order him to have them here. It has been clear to you gentlemen all along in this case that I have no sympathy whatever with the theory that defendant can call on the government

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to disclose all the evidence before criminal trial.

Mr. Anderson: If your Honor please, there are two categories.

The Court: I won't criticize the Jencks case, but I have some ideas.

Mr. Karp: The court position, since the Bowman Dairy case, is that this kind of subpoena is not a subject for pre-trial inspection.

Mr. Anderson: There are two categories, and one category is documents that were presented to this Grand jury. It is obvious that those documents may fall into two different groups, the group that Mr. Karp is going to use in evidence in the trial, and secondly, a group he is not going to use.

The Supreme Court passed on the validity of that type of subpoena. We believe and we urge you, sir, that we have a right to have pre-trial access to those documents now.

The Court: Which documents?

Mr. Anderson: I say to all of the documents. In addition, I certainly say if you are going to limit this in any respect, and we urge you not to, that we would have a right to those documents presented to the Grand Jury which are not going to be introduced in this trial for cross-examination purposes.

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The Court: That is one way of getting at the minutes of the Grand Jury, which has never been a practice of this court, and I have refused scores of motions to inspect the minutes of the Grand Jury or to have the evidence produced before a Grand Jury.

Mr. Karp: What they specifically asked for apparently are documents which were not subpoenaed by the Grand Jury but which were presented to the Grand Jury. They are going beyond the subpoena and want documents which the Grand Jury considered.



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The Court: I don't think the Supreme Court or any other court has ever ruled that defendants in a criminal case have a right to know what evidence was introduced before a Grand Jury except where there may be a clear question of a contradictory testimony.

I know there are some states that permit what they call inspection of the minutes of a Grand Jury and we have never done it in this court.

Mr. Abrams: It has been stipulated that this subpoena issued to Pittsburgh Plate Glass would inure to all of the defendants. That has been stipulated to between the balance of the defendants and the government.

Mr. Karp: There is no problem about that.

Mr. Anderson: I take it, your Honor, that you are denying our motion for production this morning.

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The Court: Yes, sir.

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The Court: Gentlemen of the jury, I will attempt to clarify right in the beginning what the issue is.

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I feel, as I have said several times during the course of the opening statements, ~~that they~~ have gone very far afield and have not confined themselves to the pertinent issues in the case. Every one of counsel has made some reference to increased prices as if the defendants were charged with increasing prices. Every industry in this country and elsewhere in the world suffers fluctuation, and there is a wave of prosperity from time to time, and frequently in any industry there is a general increase of prices, due to shortages and maybe due to increased labor cost.

For perfectly legitimate reasons you will find in any industry prices may go up.

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The issue in this case is whether or not these people combined—not necessarily to raise the price—to sell at the same price for the purpose, or approximately the same price, for the purpose of stifling competition. That may be proved by circumstantial evidence. Equally it may be disproved by circumstantial evidence.

If the evidence in this case goes to show that different prices were charged, and there was free competition among these various manufacturers, all that would certainly go to indicate that there was no agreement between them, and at the same time if it

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should develop that they were charging about the same price, giving just about the same discount, so that they stifled all competition within this area, that would tend to show that they had some agreement among them. But the gravamen of the whole business is whether or not they had some understanding or agreement which is the basis of a conspiracy—and that is what is meant by a conspiracy, an agreement or understanding among themselves to stifle competition by the charging of a uniform price for their products.

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The fact that the price might have been raised does not in itself indicate that because the price may go up in any industry for reasons of shortages or other valid reasons. There might be a general price increase in all industry on certain lines of goods because of lack of materials and things of that sort. But bear in mind the one issue, and that is whether or not there was a combination or agreement or understanding among these various defendants, or any of them—any two or more of them—the expression has been used here, to stabilize prices. We can use that, if you want. That is, to hold the product at substantially the same price for the purpose of stifling competition. That is the only issue in this case.

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I say the mere fact that prices might have gone up generally in the mirror industry about the fall of 1954 is in itself no indication of any crime unless the increase in prices and a stabilization of them was due to an illegal agreement or conspiracy.

So don't get confused as to what the issue in the case is. I think a good many things have been said here today that have little bearing on the case. That is the issue before you. Now, I think we shall adjourn at this time. There is no use starting

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on the testimony now, unless you have something that would not take over ten minutes.

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Thereupon, the Court and Counsel retired to Judge's Chambers for a conference on the record, out of the hearing of the Jury Panel, and the following proceedings were had.

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Mr. Karp: Very well.

I have addressed myself to the remarks of all the counsel. Mr. Morison himself said there were some 5000 invoices and other documents. Adding them all up, the documents must run into many tens of thousands, and I want the record to be clear on it.

The Court: I don't see what all the argument is about. You did not subpoena the documents?

Mr. Karp: No.

The Court: If they brought them here to introduce

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them in evidence, I cannot rule on them until they are offered in evidence. That is all there is to it.

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As I understand it, you brought them here because you say you did not have time to make an analysis of them and a tabulated statement.

Mr. Humrickhouse: No, your Honor. That is not the reason we brought them here. This accounting study is an integral part of our defense and the Government has known that, certainly since we filed our motion for a continuance.

The accountants are prepared to testify as to their gleanings from these documents. We only want to come within the rule that in order for them to testify, that we do not have to produce all of these in court by making the tender which we made on yesterday. We believe we have done all that is proper.

The Court: All right.

Mr. Karp: We say the tender is not in good faith and it is not a proper tender because they were not made available in time.

The Court: All right, gentlemen. I will rule on them when the testimony is tendered.

Mr. Karp: Thank you.

Mr. Gibson: If the Court please, may I simply state for the record, I do not understand that there

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is an issue presented here, but for the record, the basis of our documents or invoices which were covered by the subpoena and produced, as we understand them.

Furthermore, as to availability, they have been available in our office in Martinsville all along.

The Court: Were your documents responsive to a subpoena *duces tecum*?

Mr. Gibson: Yes, sir.

The Court: The time the subpoena *duces tecum* was returnable was at the beginning of the trial. If you have returned them here in response to that subpoena, you have done all that is incumbent on you.

*E. H. Mayes, for Government—Direct.*

Mr. Gibson: They are in the Marshal's office, and were on the date they were returnable.

Mr. Karp: It is obvious Mr. Gibson is talking about two things.

Mr. Gibson: We brought more documents than the subpoena covered. We brought invoices which the subpoena required, and we returned in the Grand Jury subpoena in February, 1957 a great many invoices, and Mr. Karp could have had them then.

Mr. Karp: Let us keep the record straight. You returned to the Grand Jury an affidavit with a very few invoices.

Mr. Gibson: We returned the main ones you required,

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sir.

Mr. Karp: Let us keep the record straight.

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E. H. MAYES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. For the record, will you please state your name and address? A. Everett H. Mayes, Galax, Virginia.

Q. By whom are you employed? A. Galax Mirror Company.

Q. In what position are you employed, and what are your duties? A. I am executive secretary.

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Mr. Mayes, I show you Exhibit No. 18, marked for identification, and ask you to identify it. A. I do identify that.



*E. H. Mayes, for Government—Direct.*

Q. Will you tell the Court and jury what it is? A. It is a letter which I wrote to the Department of Justice, Room 404, United States Court House, Chicago 4, Illinois, on December 6, 1955, to the attention of Mr. Earl A. Jinkinson.

Q. Was that addressed to the Department of Justice in connection with the Grand Jury investigation taking place in Chicago at the time? A. Yes.

Mr. Karp: I offer Exhibit No. 18 marked for identification in evidence.

Government's Exhibit No. 18, Letter of December 6, 1955, to Department of Justice from E. H. Mayes, Galax Mirror, last above referred to, admitted in evidence.

Mr. Karp: I would like to read the first paragraph which is the pertinent part of this letter, Exhibit No. 18, dated December 6, 1955.

Mr. Humrickhouse: If your Honor please, I would like to note an objection to the characterization of Government counsel as to what is pertinent and not

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pertinent. It is for the Court and jury to determine that.

Mr. Karp: Yes. I would like to read the letter dated December 6, 1955, signed by Galax Mirror Company, Incorporated, E. H. Mayes, Treasurer.

“Department of Justice,  
Room 404, United States Court House  
Chicago 4, Illinois

Attention Mr. Earl A. Jinkinson

Gentlemen:

We have your letter of November 15, File 60-14-37: Please be advised that the discounts off the mirror list of April, 1950, as quoted in our letters to

*E. H. Mayes, for Government—Cross.*

the trade dated September 1, 1953, November 3, 1953, December 28, 1953, January 14, 1954 and October 29, 1954, applies to furniture manufacturers only."

The last paragraph:

"As far as we are able to ascertain, the file which we submitted to you is complete and the five letters sent out to the trade and referred to above cover all price changes for the entire period in question."

By Mr. Karp:

Q. Mr. Mayes, I show you Exhibit No. 19 marked for identification and ask you to identify it. A. I identify it.

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Q. Will you tell the Court and jury what it is? A. It is a letter dated December 14, 1955 to the Department of Justice, Room 404, United States Court House, Chicago 4, Illinois, to the attention of Mr. Earl A. Jinkinson. "Gentlemen"——

Q. Just who wrote it. A. Signed by Galax Mirror Company, E. H. Mayes, Treasurer and I happened to be Treasurer at that particular time.

Q. Was this sent to Mr. Jinkinson in connection with the Grand Jury investigation being conducted in Chicago at the time? A. That is correct.

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*Cross examination by Mr. Morison:*

(For Galax Mirror Company, Inc., Mount Airy Mirror Company, and J. A. Messer, Sr.):

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Q. Now, Mr. Mayes, this morning Mr. Karp very helpfully asked you about the question of the total amount of

*E. H. Mayes, for Government—Cross.*

sales in the years 1953, 1954, 1955, and 1956, and you explained to him that there had been an error. He asked you that since you had corrected the figure given in this document to the Grand Jury for the year 1954 from \$1,815,565.11 to

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\$815,565.11. He then asked you if the amount of business done in the next year, in 1955, which is reported here as \$1,122,753 odd, was not higher, and you answered, if I recall, "Yes, of course, it is higher." Can you now tell us what accounted for the 200,000, almost 300,000, increase in sales of Galax in the year 1955, if you know? A. I believe that would be accounted for due to the increase in the number of customers that we had, and I am not sure——

Q. Let me ask you if the figure, roughly, of \$800,000 in sales that you received in 1954 was not relatively small for your company as an ordinary year? A. Yes, sir.

Q. Why did you have such a low market in 1954? A. I believe that was the year that there was a glass shortage and competition was so keen.

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Q. I asked you the question why did you have lower sales during the year 1954 than the year 1955? A. Lower sales?

Q. Yes. You had only \$800,000 according to your testimony of total sales in 1954 whereas in the previous year, 1953, you had \$1,300,000. A. For one thing the furniture business was terrible that year, and they did not use a lot of mirrors. In January the market picked up and we were flooded with orders from furniture manufacturers.

Q. Was the year 1955 a good year for the furniture manufacturers? A. As I recall, in hearing people discuss it, it was one of the best years in the furniture industry.

Q. 1954 was then not a good year? A. Yes, sir, that is right.

*R. J. Helms, for Government—Direct—Cross.*

Q. Would you say that the furniture market was in a slump until the fall of 1954? A. Yes, sir.

Q. That meant that your furniture customer did not have any demand for mirrors if he was not making much furniture that used them? A. Yes, sir, that would be right.

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R. J. HELMS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Carlson:*

Q. For the record, would you state your name, sir? A. R. J. Helms.

Q. By what company are you employed, Mr. Helms? A. Weaver Mirror Company.

Q. What is your position with Weaver Mirror Company? A. Officially treasurer.

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*Cross examination by Mr. Lee:*

*(For Weaver Mirror Company, Inc.)*

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Q. Now this letter, Government's Exhibit 37, which I show you, a letter dated October 29, 1954, sent to Bald Knob Furniture Company, Stanley Furniture Company, Vaughan Furniture Company, and Vaughan Bassett Furniture Company, all in Virginia, notifying of a price change. You have seen that letter before you, have you not? A. Yes, sir.

Q. Did you have any part, and if so, what part, in the preparation of this letter and the conclusions reached therein?

*R. J. Helms, for Government—Cross.*

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Mr. Carlson: Objection, your Honor. This witness merely identified the letter and the letter went into evidence. The letter signed by R. E. Weaver.

The Court: He wants to know what part this witness had in the preparation of the letter. I think he may ask that.

The Witness: Sir?

The Court: You may answer.

The Witness: I had quite a lot, sir. The policy of Weaver Mirror Company has always been that Mr. Weaver and I consult each other on any price change, and Mr. Weaver, after he returned from the Mirror meeting the latter part of October, advising me that there would be a price—I mean a shortage of glass, therefore that the shortage within itself would decrease our production, make our costs higher, asked me what I thought of a price increase. I told him I thought we should go to 77 at that time because we had cut out our wall mirror department where all our profit was. Our books showed we were losing money on our furniture accounts. Therefore, we should have some increase in price or otherwise we would be out of business.

At that time he said that he thought that we should go to 78, and it was finally decided to go to 78. Furthermore, we had been selling at 79 a

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few months prior to that and due to increase—we had two increases in plate glass prices at which time prices dropped five per cent due to an uncalled-for price war—so we decided, Mr. Weaver and myself agreed, to go to 78 and send those letters out.



*R. J. Helms, for Government—Re-direct.*

*Novice Baum, for Government—Direct.*

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*Re-direct examination:*

Q. Then and now. A. At that time, up until the fall of 1954, we were buying from Libby-Owens-Ford and Pittsburgh Plate Glass

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Company. Libby-Owens-Ford had to shut down one of its plants, bringing about a glass shortage at that time.

Q. I am not asking you that, Mr. Helms. I am just asking you from whom you bought? A. From Libby-Owens-Ford and Pittsburgh Plate Glass Company.

Q. Where is the plant of the Pittsburgh Plate Glass Company located that shipped polished plate glass to you?

A. During that period it was so scarce we had to get it out of Creighton.

Q. I asked you where it was located. A. They had two or three. You want me to tell all of them?

Q. Yes. A. Creighton—

Q. Creighton where? A. Crystal City, Missouri, and Ford City.

Q. Ford City where? A. Pennsylvania.

Q. And they shipped plate glass to your plant located where? A. In Rocky Mount, Virginia.

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NOVICE BAUM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

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*Direct examination by Mr. Carlson:*

Q. Would you state your name, please? A. Novice Baum.

Q. By what company are you employed? A. Stroupe Mirror Company.

*Novice Baum, for Government—Direct.*

Q. How long have you been employed by the Stroupe Mirror Company? A. Since 1950.

Q. What position do you hold with the Stroupe Mirror Company? A. I am general bookkeeper and do some secretarial work.

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Q. Directing your attention to the Grand Jury subpoena of the Roanoke Grand Jury, you were asked in that Grand Jury subpoena for similar discount letters for the 1953, 1954, 1955 period, were you not? That is, your company?

A. Yes.

Q. Did you submit any letters to the Grand Jury in response to that demand other than these two letters that I have shown you, Government's Exhibits Nos. 44 and 45?

A. Not that I recall, sir.

Q. Did you make a search for other such letters? A. Yes.

The Court: Mr. Carlson, what was the period

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covered by the subpoena? They wanted letters indicating price changes over what period?

Mr. Carlson: The period, your Honor, is January 1, 1952, to the date of the service of the subpoena. The subpoena is dated November 16, 1956.

The Court: In response to that subpoena you got these two letters only?

Mr. Carlson: Yes, sir.

The Court: Do I understand that your company had made no changes in its prices at all between January, 1952, or sometime in 1952, and January, 1957?

The Witness: Your Honor, that does not come under my official work at all in the company. I have nothing to do with prices.

The Court: What Government counsel subpoenaed, as I understand it, was any letters or notices

*Novice Baum, for Government—Direct.*

to the trade indicating price changes from time to time, if there were any, during that period, which is approximately almost five years. You submitted two letters or two copies of the same letter, dated April 2, 1954, notifying the trade of some price changes. Is that the only price change made by your company in those five years?

The Witness: I am not familiar with the prices,

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sir.

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The Court: Mr. Carlson, the subpoena is not too long. Read it to the witness, and see what was called for.

Mr. Carlson: I will read first from the subpoena of the Chicago Grand Jury, your Honor.

"All price or discount letters"——

The Court: Wait a minute. The witness is called on to produce that. Make it clear to the jury that the witness was called on to produce some matter, and this is what the subpoena called for.

Mr. Holton: If your Honor please, it was not this witness who was called on to produce it. It was the Stroupe Mirror Company.

The Court: I am perfectly aware that it was the Stroupe Mirror Company.

Mr. Carlson: I will read the whole subpoena.

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"United States District, Northern District of Illinois. Notice:

"The President of the United States of America to Stroupe Mirror Company, Thomasville, North Carolina:

*Novice Baum, for Government—Direct.*

"You are hereby commanded that laying aside all and singular your business and excuses you be and appear before the Grand Jury of the United States District Court for the Northern District of Illinois in Room 404, United States Court House, in the City of Chicago in said District on the 26th day of March, A.D. 1956, at ten o'clock a.m. of said day, and also that you bring with you and produce at the time and place aforesaid:

"(1) All expense accounts, expense vouchers, memoranda of travel or expenses, which relate or refer to any travel or business expense incurred by Grady V. Stroupe during the period from June 1, 1954 through November 30, 1954.

"(2) All price or discount letters, quotations, lists, price bulletins or price schedules received by your company from manufacturers or suppliers of polished plate glass which relate or refer to prices or discounts charged for polished plate glass and which were received by your company between January 1, 1954 and December 31, 1954."

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The second subpoena. Shall I skip the preliminary matter?

The Court: Yes.

Mr. Carlson: "All prices or discount letters, quotations, lists, bulletins or schedules, used within your company or distributed to your customers to state or announce discounts from list prices of plain mirrors, April 1, 1950, or other prices charged for mirrors by Stroupe Mirror Company during the period of time from January 1, 1953, to the date of this subpoena, to any or all of the following:

"(a) Furniture manufacturers.

*Novice Baum, for Government—Direct.*

“(b) Store fixture and refrigerator manufacturers.

“(c) Sash and door manufacturers.

“(d) Other fabricators.

“(e) Glass or mirror jobbers.

“(f) Mirror or beveling shops.

“(g) Glass stores and auto replacement shops, or

“(h) Any other class of trade regularly solicited or sold.”

The Court: When that subpoena was served on your company it was not served on you personally, of course, I don't presume, was it turned over to you to interpret what was called for or did someone tell you what to produce?

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The Witness: It was not turned over to me.

The Court: How did these two letters or two copies of one letter get out of your files and that is all?

The Witness: I can't answer that, sir.

Mr. Carlson: Your Honor, I just read the Chicago Grand Jury subpoena. I have not read the Roanoke Grand Jury subpoena.

The Court: I suppose it is substantially the same thing?

Mr. Carlson: It is worded a little differently, your Honor.

The Court: Did it call for all correspondence listing notices bearing on prices over a certain period for approximately four years? I am trying to get from this witness who interpreted that subpoena and undertook to get together the data which was called for by the subpoena.



*Novice Baum, for Government—Cross.*

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*Cross examination by Mr. Sandridge:*

*(For Stroupe Mirror Company:)*

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Mr. Sandridge: We offer this in evidence. That will be Defendants' (Stroupe) Exhibit No. 12.

Defendants' (Stroupe) Exhibit No. 12, last above referred to, admitted in evidence.

Mr. Sandridge: Your Honor, as Mr. Karp said, this was to the Roanoke Grand Jury, and this is on the letter-head of Stroupe Mirror Company.

"Since our furniture companies are relatively few in number, changes in price schedules are generally put into effect by personal calls. A schedule showing discounts in effect from list prices of plain mirrors, April 1, 1950, from January 1, 1952 to the present time, is listed below.

"Since only one change was made by letter 'To Our Customers' it was necessary for us to establish the effective dates of the other changes from copies of our invoices to our furniture manufacturer customers."

Then I will skip.

"Prices in effect to plain mirror customers based on discounts from list prices of plain mirrors from January 1, 1952 to November 16, 1956."

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Then there follows a tabulation. I think it is not necessary to read more than this one or than these few.

Mr. Karp: I would suggest—

Mr. Sandridge: I will go all the way.

*H. F. Barrett, for Government—Direct.*

Mr. Karp: I have no objection. Do it your way.  
The Court: Read them all.

Mr. Sandridge: "January 1, 1952 to December 4, 1952, 80 percent discount from list. December 4, 1952 to October 4, 1953, 79 percent. October 13, 1953 to January 29, 1954, 80 percent. January 29, 1954 to June 4, 1954, 80 and 10 percent. June 4, 1954 to November 23, 1954, 80 percent. November 23, 1954 to July 2, 1956, 78 percent. July 2, 1956 to November 16, 1956, and at present it adds, 77 percent."

H. F. BARRETT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. Will you please state your name and address for the record? A. H. F. Barrett, Pittsburgh Plate Glass Company, High Point, North Carolina.

Q. I would ask you, please, to speak up somewhat. A. Yes, sir.

Q. With whom are you employed, you say? A. Pittsburgh Plate Glass Company.

Q. Where are you employed with that company, sir? A. High Point, North Carolina.

Q. In what capacity are you employed? A. Manager, Glass Department.

The Court: Manager of what department?

The Witness: Glass Department.

By Mr. Karp:

Q. How long have you been employed with Pittsburgh Plate Glass Company? A. 43 years.

*H. F. Barrett, for Government—Direct.*

Q. In what capacities have you been employed in those years?

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A. From stock clerk up to my present position.

Q. Are you presently located at High Point warehouse?

A. Yes.

Q. Is that also called the High Point Branch of Pittsburgh Plate Glass Company? A. Yes.

Q. In what line does the High Point warehouse or branch engage? A. It is general jobbing or distributing warehouse.

Q. Of what commodities? A. The company's products, glass, paint, brushes, insulating material, glass block, mirrors.

Q. You say glass. You mean plate glass? A. Plate glass, window glass, rough rolled glass.

Q. Do you engage in the sale of polished plate glass which is used in the manufacture of mirrors? A. The company is. I have nothing to do with that end of it.

Q. The High Point warehouse? A. Yes.

Q. They do? A. They do.

Q. When I said you, I meant you as the manager. Do you at that warehouse engage in the manufacture of mirrors? A. Yes, we do.

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Q. Do you engage in the manufacture of plate glass mirrors? A. That is right.

Q. That would include plain plate glass mirrors, I take it? A. Yes.

Q. Can you tell the Court and jury, sir, whether the Pittsburgh Plate Glass Company is a manufacturer of plate glass? A. You mean at High Point?

Q. No. I mean the entire company. A. Yes, they do manufacture plate glass.

Q. You say you have been employed with that company for some 43 years? A. That is right.

*H. F. Barrett, for Government—Direct.*

Q. You know quite a bit of the company, I take it? A. I would think so:

Q. In what business does the Pittsburgh Plate Glass Company, without respect necessarily or not limited to the High Point Branch, do? A. Different branches do the same type of business that we do.

Q. Where is the glass manufactured—the plate glass? A. Ford City, Pennsylvania; Creighton, Pennsylvania; Crystal City, Missouri; and the new plant at Cumberland,

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Maryland.

Q. Are those all the plants for the manufacture of plate glass? A. As far as I know.

Q. What else does the company do, without limiting your answer to the High Point warehouse? A. You speak of the manufacturing end or the branches?

Q. Each end. A. They manufacture window glass for sale through the branches and of course plate glass and various items, too numerous to mention.

Q. Like what? A. Structural glass, which is used in bathrooms and kitchens.

Q. What other commodities do they manufacture? A. I don't know the various commodities outside of the glass end of it.

Q. You have been with the company for 41 years, you say? A. They have various subsidiaries that I am not too familiar with.

Q. You are familiar with the various aspects of its manufacturing, aren't you? A. I would think so, yes.

Q. Tell the Court and jury what they are?

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A. They make brushes. They make soda ash, and various items that they use in the manufacture of glass.

Q. Do they make paint? A. They make paint.

Q. Is the paint manufacturing a large business venture in itself? A. It is.

*H. F. Barrett, for Government—Direct.*

Mr. Anderson: If your Honor please, I would like to be able to stipulate with Mr. Karp if he will tell me what his line of questioning is. I didn't realize that paints were involved in this indictment, sir.

The Court: Are you objecting?

Mr. Anderson: I don't want to object, if he will tell me where he wishes to go on this point. I probably would be willing to stipulate that Pittsburgh Plate Glass Company makes various products.

The Court: I don't know the purpose of it. I cannot understand the witness's reluctance to come out and say that they make paint, chemicals, varnishes, and all kinds of things.

Mr. Anderson: One of his first answers was that they did make paints and brushes.

The Court: He finally got it out of him, yes.

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By Mr. Karp:

Q. The scope of the operations of Pittsburgh Plate Glass is country-wide? A. It is.

Q. Pittsburgh Plate Glass Company is one of the largest industrial companies in the United States, is it not? A. So I understand.

Q. With respect to its manufacture and sale of plate glass mirrors, can you tell the Court and jury which of its warehouses or branches engage in that industry? A. I don't have a list of it, and I don't know.

Q. Do you have any idea? A. Of course, they manufacture mirrors at Ford City, Pennsylvania, which is their factory.

Q. How many warehouses do they have manufacturing mirrors? A. I don't know.

Q. You don't have any idea? A. No, sir.

Q. And you have been manager of glass for how many years now? A. We don't communicate with the other warehouses insofar as their operations are concerned.



*H. F. Barrett, for Government—Direct.*

Q. Is it a secret? A. No.

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Q. Do you have one in Roanoke? A. We did have one I don't know whether it is still operating or not.

Q. You don't know whether the Roanoke warehouse is operating? A. Not in the mirror manufacturing, no.

Q. What other warehouses does Pittsburgh Plate Glass have? A. I imagine they manufacture mirrors in Chicago and at one time they did in Atlanta.

Q. Do you have one in Newark? A. I don't know.

Q. Do you have one in New Haven? A. I don't know.

Q. Do you know whether they ever did have one in Newark? A. No.

Q. Did they ever have one in New Haven? A. Not that I know of.

Q. Do you ever have meetings of plant managers at Pittsburgh or any place else? A. Yes, they do.

Q. Do you meet the other managers of other warehouses? A. Let me make myself clear. I am the manager of the glass department, not the warehouse.

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Q. As manager of the glass department, do you have occasions to have any meetings at Pittsburgh? A. We had one.

The Court: Mr. Karp, I think this has gone far enough unless you have some purpose other than to show the size of the Pittsburgh Plate Glass Company. Everybody knows Pittsburgh Plate Glass is a big concern, and the witness has already said that.

Mr. Karp: I wanted to show its relationship in the manufacture and sale of plate glass mirrors, your Honor.

Mr. Anderson: We are perfectly willing to concede that we manufacture plate glass mirrors and

*H. F. Barrett, for Government—Direct.*

ship them in interstate commerce and that we are a large company and that we are proud of it.

Mr. Karp: Will you stipulate that Pittsburgh Plate Glass Company has numerous warehouses or branches making plate glass mirrors, including plain plate glass mirrors for sale to furniture manufacturers in various parts of the country?

Mr. Anderson: I will be very pleased, Mr. Karp, to stipulate to the facts that are set forth in the enclosure to my letter to you of March 18, 1957.

Mr. Karp: Let me proceed with the witness. I don't like this fencing.

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The Court: Wait a minute.

Mr. Anderson: I can shorten this.

The Court: You asked Mr. Anderson something. Let him answer it, Mr. Karp.

Mr. Anderson: As of 1956, I will concede that we manufactured mirrors.

Mr. Karp: In which places?

Mr. Anderson: That we manufactured mirrors at 28 different locations in the United States, and that as of the end of 1956 that number had been reduced to 19 locations.

Mr. Karp: All right, sir.

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By Mr. Karp:

Q. Do you know whether Pittsburgh Plate Glass Company sells plate glass to any mirror manufacturers other than its own High Point branch? A. Yes.

Q. In Virginia and North Carolina? A. I do in North Carolina. I am not familiar with Virginia.

Q. To which mirror manufacturers does Pittsburgh Plate Glass Company sell plate glass for mirror manufacturing purposes in North Carolina? A. Stroupe Mirror Company, Logan Porter Mirror Company.

*H. F. Baggett, for Government—Direct.*

Q. Slower and louder. A. I am sorry. Stroupe Mirror Company, Logan Porter Mirror Company, and I believe Lenoir Mirror Company and Mount Airy Mirror Company.

Q. Galax? A. And Galax and North Wilkesboro, the Carolina Mirror Corporation.

Q. Does it sell to Weaver Mirror Company? A. I don't know.

Q. Or Virginia Mirror Company in Virginia? A. I wouldn't know.

Q. So in North Carolina it sells to all the mirror companies located in that state?

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A. That is right.

Q. In the manufacture of plate glass, is Pittsburgh Plate Glass Company one of the largest in the United States? A. I would say yes.

Q. Would you say that it is the largest in the United States? A. No. I would have no way of knowing that.

Q. I see.

What are your duties in your present position as Manager of Glass? A. Controlling the sales to millwork concerns, general contractors, hardware stores, furniture stores, various distributors. When I say "distributors," I mean glass shops.

Q. Do you deal with furniture manufacturers also? A. I don't personally. The warehouse does.

Q. Your department, does that deal with furniture manufacturers? A. No.

Q. Have you not from time to time engaged in correspondence with furniture manufacture customers with respect to mirrors? A. Only when requested by the manager.

Q. During the many years of your duties in High Point, have you become familiar with the plate glass mirror facets of the High Point warehouse?

*H. F. Barrett, for Government—Direct.*

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A. Yes.

Q. Who is your superior? A. L. H. Hancock.

Q. What is his job? A. He is the Warehouse or Branch Manager.

Q. You are an assistant to him, are you? A. The warehouse is operated under a department, Paint Department and a Glass Department. We have a Paint Manager and a Glass Manager.

Q. The Glass Manager includes the mirrors as well as other glass? A. No.

Q. Where does that go? A. You say—

Q. You have a Paint and a Glass Department? A. That is right.

Q. Where do the mirrors fall? A. The mirrors are in the Glass Department.

Q. And you are head of the Glass Department? A. That is right.

Q. Are you acquainted with W. A. Gordon? A. I am.

Q. He is a defendant in this case? A. I understand he is.

Q. What is Mr. Gordon's position with Pittsburgh Plate

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Glass Company? A. Manager of plate glass sales.

Q. How long has Mr. Hancock held the position of manager of the High Point warehouse? A. I can't give you the exact date.

Q. Give us the approximate date, to your knowledge. A. I think it was 1931.

Q. Since 1931? A. I think so.

Q. How long has Mr. Gordon held his position? A. I don't know.

Q. What position does he hold? A. Manager, Plate Glass Sales.

Mr. Karp: If your Honor please, a subpoena has been issued directed to Pittsburgh Plate Glass Com-

*H. F. Barrett, for Government--Direct.*

pany calling for a document showing Mr. Gordon's position with Pittsburgh Plate Glass.

Could they be produced unless you want to admit?

Mr. Anderson: I will be very happy to admit that Mr. Gordon is Manager of Plate Glass Sales, stationed in Pittsburgh, and I believe as of October 1954 you were Manager of Plate Glass Sales at that time.

Mr. Karp: He has been manager for how long?

Mr. Anderson: I will have to check the document that is at the hotel, Mr. Karp, and I will be very pleased to

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state it on the record tomorrow, or later this afternoon.

Mr. Karp: Has he been manager since 1950?

Mr. Anderson: He has been in the Plate Glass Sales Department with different titles. His former title, if I recall correctly, was Manager of Trade Sales. Then he was promoted to the position of Manager of Plate Glass Sales.

Mr. Karp: Then you will either stipulate or produce evidence tomorrow?

Mr. Anderson: I will be very pleased to.

Mr. Karp: Thank you.

By Mr. Karp:

Q. What is Mr. Hancock's responsibility and duties as Manager of the Pittsburgh Plate Glass warehouse at High Point? A. Being manager, he is responsible for the operation of the warehouse as a whole; sales, credits.

Q. Does that include plate glass mirrors and plain plate glass mirrors? A. Yes, it does.

Q. Including those sold to furniture manufacturers?

A. Furniture manufacturers only. As far as furniture



*H. F. Barrett, for Government—Direct.*

stores, hardware stores, or general contractors, builders, that is handled by me.

Q. Who is Mr. Hancock's superior? Would that be Mr.

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Gordon? A. No, I wouldn't think so. There have been so many changes—

Mr. Anderson: I don't want to cut off the witness, but I will be pleased to stipulate that as of October 1954 Mr. Hancock, as Manager of the High Point warehouse, his superior was Mr. W. R. Harper—I am sorry. It was Mr. D. C. Burnham, then Vice President of the Merchandising Division in Pittsburgh.

Very recently Mr. Burnham has retired and has been succeeded by Mr. Felix T. Hughes, who is Vice President in charge of the Merchandising Division.

Mr. Karp: Who is Mr. Burnham's superior?

Mr. Anderson: The President of the company.

Mr. Karp: Where does Mr. Gordon come in as Manager of Plate Glass Sales? Is there any relationship to Mr. Hancock?

Mr. Anderson: Mr. Gordon reports to a different Vice President. He reports to the Vice President in charge of glass sales, which is a title not related to the Merchandising Division.

By Mr. Karp:

Q. So then is it your position, Mr. Barrett, that there is no business relationship between Mr. Hancock and Mr. Gordon? A. I would say no. That is, as far as supervision is

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concerned.

Q. Is there a relationship in sale of plate glass sales to Mr. Gordon's position as Manager of plate glass sales?

A. I didn't quite understand that.

*H. F. Barrett, for Government—Direct.*

Q. Is there a relationship between the sale of mirrors and the sale of plate glass? A. No.

Q. Doesn't plate glass go into the mirror? A. It does.

Q. Isn't there a relationship in the sale of mirrors and the sale of plate glass? A. The Mirror Department handles that as a separate department.

Q. The more mirrors you sell, the more plate glass you sell; is that right? A. That is right.

Q. And the higher price you get for mirrors, the higher price you can get for the plate glass. Isn't that right? A. That would tie in, yes.

Q. And vice versa? A. That is true.

Q. So that Mr. Gordon has a very definite interest in the sale of mirrors, does he not? A. I wouldn't say so. He would be more interested in the sale of plate glass.

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Q. That is right. He is interested in selling more mirrors so he can sell more plate glass, isn't that so? A. I wouldn't say so, no.

Q. Isn't it obvious? A. It is.

Q. Then wouldn't you say the obvious? A. Not in this case, no.

Q. I didn't think we would have any trouble on this. You say Mr. Gordon is head of plate glass sales. A. That is right.

Q. And he is interested in selling plate glass. A. That is true.

Q. And plate glass goes into mirrors? A. That is right.

Q. And the more mirrors sold, the more plate glass is sold. A. That is right.

The Court: Mr. Karp, you repeated that statement three or four times and the jury is perfectly capable of realizing that the more mirrors that are made, the more demand there will be for plate glass to make them.

Mr. Karp: Very well, your Honor.

*H. F. Barrett, for Government—Direct.*

By Mr. Karp:

Q. Where does the plate glass come from for High Point

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mirror manufacturing purposes? A. Ford City, Pennsylvania.

Q. It is shipped from Ford City into High Point, North Carolina? A. That is correct.

Q. And the mirrors are then manufactured at High Point, North Carolina? A. Yes.

Q. Is it Pittsburgh plate glass that is used exclusively by the High Point warehouse? A. For the furniture manufacturers, yes.

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Q. Does the High Point branch sell to any furniture manufacturers located outside of North Carolina? A. Yes, we do.

Mr. Anderson: I am perfectly willing to stipulate interstate commerce on this point, if it will save you any time, Mr. Karp. They sell out of state from High Point to an account in South Carolina; as I recall, during the past three years from time to time to an account in Virginia. We concede the interstate commerce.

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Mr. Karp: I am now having marked for identification Government Exhibit No. 55, list of PPG High Point warehouse furniture manufacturer customers for various years. These documents were produced pursuant to subpoena *duces tecum* before the Grand Jury. This is for 1954, 1955, 1956.

Mr. Anderson: It is one exhibit.

Mr. Karp: I offer it in evidence.

Mr. Anderson: No objection, your Honor.

*H. F. Barrett, for Government—Direct.*

(Government's Exhibit No. 55, last above referred to, admitted in evidence.)

Mr. Karp: Do you want copies of the copies, counsel? You have had them. You have gotten them several times.

Mr. Gilmer: That is all right.

Mr. Anderson: I think, Mr. Karp, if you have extra copies, they don't have them.

Mr. Gilmer: You made the statement of distributing them to us several times. I don't have them.

Mr. Karp: I said in discovery inspection you had

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them.

Mr. Gilmer: I did.

Mr. Karp: Oh. I read from this exhibit; "PPG High Point warehouse furniture manufacturer customers, 1954, total dollar sales of plain mirrors, \$126,712.97 in 1954. In 1955, total dollar sales of plain mirrors to above customers, \$164,172.54."

Mr. Anderson: You didn't read the whole document.

Mr. Karp: No. You stipulated as to customers, interstate commerce.

Mr. Anderson: You did not read the total dollar figures on these two documents.

Mr. Karp: I read the total dollar sales of plain mirrors. There are also total dollars sales of fabricated unframed mirrors.

Mr. Anderson: On the other dollar volume figures you read for these other companies, they have included plain and fabricated mirrors. I have taken notes on that.

Mr. Karp: I thought you prefer that I did not include plate glass figures. Mr. Anderson refers to fabricated unframed mirrors which is the same as

*H. F. Barrett, for Government—Direct.*

plate glass mirrors, plain mirrors fabricated, total dollar sales of fabricated mirrors, \$112,855.42. Total plate glass mirrors \$239,568.39 in 1954. Total in 1955, \$192,688.78.

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Mr. Anderson: Thank you.

Mr. Karp: I would like to have marked for identification this document, Exhibit No. 56. This is a document submitted pursuant to Grand Jury subpoena, and I offer it in evidence.

Mr. Anderson: No objection, your Honor.

(Government's Exhibit No. 56, last above referred to, admitted in evidence.)

Mr. Karp: I am having marked for identification these letters as Exhibit No. 57, 58, 59 and 60. These are documents produced before the Grand Jury pursuant to subpoena, and I offer them in evidence.

Mr. Anderson: In order that I keep my records straight, may I just check back here to be sure I am getting them right?

Mr. Karp: I will show you these exhibits so there will be no confusion.

Mr. Anderson: All right. There is no objection to these documents.

(Government's Exhibits Nos. 57, 58, 59, and 60, last above referred to, admitted in evidence.)

Mr. Gilmer: As you fix the number, it would

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help us if you would give us the name of the company that exhibit attaches to. The second one we got is dated the same as the first one. What exhibit is this letter to Sand Hill Furniture Corporation? What exhibit number?



*H. F. Barrett, for Government—Direct.*

Mr. Karp: Gentlemen, may I read this to answer everybody's question? Letter to B. F. Huntley Furniture Company, Exhibit 56.

Sand Hill Furniture Company, Exhibit 57.

Sanford Furniture Company, Exhibit 58.

White Furniture Company, Exhibit 59.

Mullins Furniture Company, Exhibit 60.

Mr. Lee: To whom is Exhibit 58 addressed, Mr. Karp?

Mr. Karp: You have the copy there. Let me proceed, please.

Mr. Lee: I am sorry, I do not.

Mr. Gilmer: Exhibit 58.

Mr. Karp: 58, Sanford Furniture Company.

Mr. Lee: Thank you.

By Mr. Karp:

Q. Mr. Barrett, I show you these Exhibits 56 through 60 and ask you who wrote these letters. A. I would assume Mr. Hancock, the manager, wrote them.

Q. Each one of them? A. They are similar, aren't they? Yes, I would say

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each one of them.

Q. Tell the Court and jury what these letters are. A. Withdrawing previous prices on plate glass mirrors and quoting a new discount.

The Court: What did the witness say?

The Witness: And quoting a new discount.

Mr. Karp: He said withdrawing the old prices on mirrors and quoting a new discount, I think.

I have here Exhibit 56 from Pittsburgh Plate Glass Company to B. F. Huntley Furniture Company, Exhibit 57 from Pittsburgh Plate Glass Company to Sand Hill Furniture Corporation, from Pittsburgh Plate Glass Company to Sanford Furni-

*H. F. Barrett, for Government—Direct.*

ture Company, from Pittsburgh Plate Glass Company to White Furniture Company, and from Pittsburgh Plate Glass Company to Mullins Lumber Company. They are each dated November 1, 1954.

By Mr. Karp:

Q. Were each of these letters sent to furniture manufacturers customers? A. Mr. Karp, I can't answer that, because I don't know whether they were mailed. I expect Mr. Hancock delivered them personally.

Mr. Karp: Will you concede that these furniture manufacturer customers are as listed by Pittsburgh Plate

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Glass on a previous Exhibit?

Mr. Anderson: Certainly.

Mr. Karp: You do?

Mr. Anderson: Certainly.

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Mr. Karp: I wish to call the Court's and the jury's attention to this calendar for November, 1954, and particularly to the month of October, 1954, and to note that October 29, 1954, is on a Friday. That October 30, 1954, is on the next day, Saturday. That, turning the page, November 1, 1954, is the next day, Monday. All the same weekend.

I would like to mark this calendar for identification.

Mr. Anderson: I don't know that my witness would agree to this, but I would certainly be glad to stipulate the 1954 calendar. I don't know whether I can speak for any other counsel.

Mr. Gilmer: We don't stipulate that the next day after Saturday is Monday, but we don't object to the rest of it.

*H. F. Barrett, for Government—Direct.*

Mr. Karp: In view of the stipulations, there is no need to mark it.

I would like to read one of these letters, each of which is the same, except that they are addressed to different furniture manufacturers. November 1, 1954: "B. F. Huntley Furniture Company, Winston-Salem, North Carolina:

"Effective this date we withdraw previous prices on plate glass mirrors and quote on plain polished

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plate glass mirrors a discount of 78 per cent from list price dated April 1, 1950, f.o.b. your plant 2 per cent 30 days, net 60. At the present no change will be made from our present prices for edgework or beveling. All orders on hand will be invoiced at previous prices. New Orders will be accepted at prices prevailing at date of acceptance.

"Yours very truly, Pittsburgh Plate Glass Company."

I am having marked for identification this booklet of list prices as Exhibit No. 61.

Mr. Anderson: We will stipulate to that document.

Mr. Karp: This is list prices submitted pursuant to subpoena. It is stipulated. I offer it in evidence.

Government's Exhibit No. 61, last above referred to, admitted in evidence.

By Mr. Karp:

Q. Mr. Barrett, will you note the date on this? A. Yes. April 25, 1950.

Q. Will you read the cover, please? A. "Plain Mirrors, List Prices, April 25, 1950, Pittsburgh Plate Glass

*H. F. Barrett, for Government—Direct.*

Company, L. H. Hancock, Manager, One South Hamilton Street, High Point, North Carolina."

Q. I show you Exhibit No. 31, list prices of plain

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mirrors of Virginia Mirror Company, and ask you to look at that date? A. April 1st, 1950.

Q. So that the Virginia Mirror is April 1, 1950, and the Pittsburgh Plate Glass is April 25, 1950? A. That is right.

Q. I ask you to look at the letter and see to which list price the letter refers by date? A. List price dated April 1, 1950.

Q. The Pittsburgh Plate Glass Company did not have list prices dated April 1, 1950, in fact, did it? A. Not that I know of.

Q. Its list price book is dated April 25, 1950? A. That is right.

Q. When you said April 1, 1950, were you referring to identical list prices of your competitors? A. No, I don't know. I did not write the letter. I have no knowledge. I would assume so.

Q. Despite the difference in dates, are the contents of the Pittsburgh Plate Glass Company's the same as the contents of the competitor list price books dated April 1, 1950? A. I can't answer that because I never have seen one.

Mr. Anderson: I would be willing to stipulate that with the exception of a couple of minor differences the figures are substantially identical.

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Mr. Karp: That stipulation won't do. The "substantially identical" won't do. We will proceed with our proof.

Mr. Anderson: Very good.

Mr. Karp: I have had marked for identification as Exhibit No. 62 a document dated May 10, 1954,

*H. F. Barrett, for Government—Direct.*

entitled "Price Changes on Mirrors Effective June 1, 1954, As Follows." This is a document which was produced by Pittsburgh Plate Glass Company pursuant to Grand Jury subpoena.

I offer it in evidence.

Mr. Anderson: No objection.

Government's Exhibit No. 62, last above referred to, admitted in evidence.

By Mr. Karp:

Q. Mr. Barrett, I show you this Exhibit No. 62 and ask you what that means? A. It meant a price change in mirrors effective June 1, 1954.

Q. What price change was that? A. Plain mirrors, 80 percent.

Q. That means that effective June 1, 1954, plain mirrors' price was 80 percent off the April 1, 1950 list? A. I have been thinking about that. I believe that is

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a typographical error.

Q. What is a typographical error? A. April 1st.

Q. That is a pretty consistent typographical error. A. I noticed that.

Q. Would that be because consciously or unconsciously Pittsburgh Plate Glass was quoting from the same identical list prices?

Mr. Anderson: I think I object to the manner of that question.

Mr. Karp: I didn't mean anything wrong by the manner.

Mr. Anderson: I don't want to interrupt your examination.

By Mr. Karp:

Q. Does that indicate to you that the purpose of the quotation was to quote from the same list prices as were



*H. F. Barrett, for Government—Direct.*

used by the other mirror manufacturer defendants here?

A. I would say no, because we have never used the list.

Q. What was the purpose of the date April 1, 1950, calling your attention to the fact that the list price books of the other mirror manufacturers introduced here are each dated April 1, 1950, the same date contained in the letters just submitted, the letters of November 1, 1954, and this memorandum?

Mr. Anderson: Mr. Karp, if you don't mind, sir,

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instead of asking him what the purpose is, I would like to suggest that you ask him what his knowledge is first of this document and then you can go into purpose.

Mr. Karp: Mr. Barrett has testified that his job is Manager of glass.

The Court: What is the letter?

Mr. Karp: I will read the letter.

It is not a letter, your Honor. Perhaps it is a letter. Perhaps it is a circular. It is a document which is dated May 10, 1954; on the left-hand corner the names White, Huntley, Sanford, Sandhill and Mullins, all furniture manufacturers listed in the previous document.

The Court: All right, sir.

Mr. Karp: It is headed "Price Changes on Mirrors Effective June 1, 1954, As Follows: Plain Mirrors, 80 percent off April 1, 1950 list. Polished edges, one-half cent per lineal inch; one-half bevel and polished edges, one cent per lineal inch. Three-quarter inch bevel and polished, one-half cent per lineal; one-inch bevel and polished edges, two cents per lineal inch."

The Court: What are you trying to ask the witness?

*H. F. Barrett, for Government—Direct.*

Mr. Karp: Showing him the date, 80 percent off the April 1, 1950 list, and calling his attention that the Pittsburgh Plate Glass list is dated April 25, 1950, I am asking him what the purpose of the date is, what it means.

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The Court: That is the same question you asked with regard to the letters of November 1st.

Mr. Karp: Yes.

The Court: I think it is quite plain, Mr. Barrett, you were referring to the list which was existing on April 1, 1950, weren't you?

The Witness: No. I have no knowledge of that.

The Court: You did not write this letter?

The Witness: No, I did not.

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By Mr. Karp:

Q. You do have knowledge of the April 1, 1950, list existing in the trade, do you not? A. April the 1st?

Q. Yes. You have knowledge? A. I have. I saw it today. That is the first time I have ever seen it.

Q. Haven't you written letters to furniture manufacturer customers concerning discounts and prices? A. No, I have not.

Q. Haven't you had contact with mirror customers? A. Yes, by telephone.

Q. And in contacting them, haven't you discussed discounts? A. Not at all.

Q. Not at all? A. Not at all.

Q. You are not aware of an April 1st list? A. I was not until recently. I have not seen one until today.

Q. How recently were you aware of it? A. When the documents, photostatic copies, were sent to us at High Point.

Mr. Karp: If this is a matter of issue, we will have to subpoena Mr. Hancock.

The Court: It is not of that sufficient importance.

Mr. Karp: All right, your Honor.

The Court: There is no question in the world about what list you are talking about. It just happens that Pittsburgh listed a different date on the outside of the folder. I make that statement, gentlemen, on the assumption you won't object to my making it in order to shorten this. You said your list was substantially the same as the other.

Mr. Anderson: That is correct.

The Court: Your list happens to be dated April 25, and theirs is dated April 1st.

Mr. Anderson: That is correct, your Honor.

Mr. Karp: I offer in evidence Exhibit No. 63.

Mr. Gilmer: Number what?

Mr. Karp: 63. I think there is a little mixup for which I apologize. I believe I stated I was offering Exhibit No. 63 in evidence. That has not been identified. I am having identified this document dated December 3, 1946, bearing number in the bottom R 17176 as Exhibit No. 63. That is a document which was produced pursuant to subpoena of the Grand Jury, and I offer it in evidence.

Mr. Anderson: No objection.

Mr. Karp: Just a moment. We will bring it out.

The date is not mysterious.

Mr. Gilmer: If it is offered in evidence as an exhibit, your Honor, I think I have a right to know who the exhibit is from.

Mr. Karp: Let me proceed, please. I have a witness on the stand.

Mr. Gilmer: I want to know.

*H. F. Barrett, for Government—Direct.*

The Court: Gentlemen, stop that bickering. Go ahead and identify the document and present it to the witness.

Mr. Karp: Yes, sir.

By Mr. Karp:

Q. Will you tell the Court and jury what this is, please?

A. That is the prices we used for a fixture manufacturing company in Statesville, North Carolina. It is the Morrison Furniture and Fixture Company of Statesville, North Carolina.

Q. Does that show, Mr. Barrett, a 78 per cent discount?

A. On polished plate glass?

Q. Yes. And then a change to 77 per cent. Is that correct? A. No. 1946, that is an old sheet.

Q. Do you see the date up there, July 1, 1955? A. Yes.

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Q. Would that indicate there was a change from 78 per cent to 77 per cent? A. No. The top item is plate. This is polished plate glass, 78; polished mirrors, 77.

Q. Would that indicate that on July 1, 1955, there was a change in the polished mirror price to 77 per cent? A. Yes.

Q. The previous price having been 78 per cent? The November 1, 1954, price was 78 per cent. A. Yes, that is true.

Q. The change on July 1, 1955, would be 77 per cent. A. That is correct.

Mr. Karp: Thank you.

Mr. Anderson: Excuse me, your Honor. I am not sure that there is anything in the evidence that shows what the price to the Morrison account was as of November 1.

Mr. Karp: We were talking about the established quotation prices as shown by the November 1 letter.

*H. F. Barrett, for Government—Direct.*

The Court: Have you got the letter there?

Mr. Anderson: I have this letter, your Honor, Government Exhibit 63 which has just been shown to the witness.

The Court: What does it say?

Mr. Anderson: I would like to have you see it,

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if your Honor please. It would appear to be the price prior to November 1.

Mr. Karp: Look at the November 1, 1954, letter and then the next letter will be quite clear. Your Honor, the witness testified that the 78 per cent price was changed to 77 per cent as shown by that exhibit on July 1, 1955. That is all we are doing here. We are showing the change.

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Thereupon, the Court and Counsel retired to Judge's Chambers for a conference on the record, out of the hearing of the Jury Panel, and the following proceedings were had:

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The Court: Now that I have you here, have you any idea how long you are going to take, Mr. Karp, to finish your case?

Mr. Karp: It is pretty hard to answer in view of the practice of counsel taking on witnesses as their

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own witness. We cannot gauge it very well.

The Court: You have not helped a great deal to expedite things.



*H. F. Barrett, for Government—Direct.*

Mr. Karp: I am compelled to cross examine their witnesses.

The Court: Go ahead.

Mr. Karp: I would think, if we excluded that kind of procedure, or at least not taking that into account, we would have about two or three days.

The Court: Then, gentlemen, I want to say this. The newspaper yesterday said that the case might last longer than Aaron Burr trial. I think the idea has gotten around here—as a matter of fact old Aaron Burr's trial didn't last but three weeks—all the rest of the time was taken up in objections to the indictment and that sort of stuff. They adjourned for a month, and so on. The actual trial took about three weeks, I think.

I have an impression that you gentlemen have brought up here just carloads of documents which you don't intend to introduce perhaps individually but analyses or summaries to show sales at prices which would indicate you were making sales not in conformity with your agreement. I want to say this for your consideration.

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Mr. Hazlegrove: What agreement?

The Court: I am talking about the alleged agreement.

Mr. Hazlegrove: I want to get that straight on the record.

The Court: I want you to consider this. This is certainly my tentative view of this case. If it is proven in this case, or if there is enough evidence in here to justify the jury in finding that any agreement or understanding was entered into, I would be compelled to instruct the jury that no matter what happened after, that couldn't affect the question of guilt. If every alleged co-conspirator ran out on

the agreement the next day, or if they all double-crossed each other on prices, it would not make any difference.

Mr. Gilmer: But they can consider it, your Honor. You hold the view that they can consider it in line with whether they think an agreement was entered into.

The Court: I think they can if it is relatively close to the time of the alleged conspiracy. It is true this conspiracy alleges a continuance and so on. But the continuing part does not mean a thing in the world except as related to the possibility of the statute of

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limitations.

Mr. Gilmer: Yes, sir. And as to whether they entered into the agreement at all.

The Court: If they all got scared the next day after writing these letters that they are alleged to have written, or if they all double-crossed each other or they all ran out, that would not make a particle of difference if they once entered into the agreement.

Mr. Morison: That is right, but the point we are making is that the sole issue you are addressing yourself to is whether or not an agreement occurred.

The Court: That is right.

Mr. Morison: The pertinency of the evidence of the behaviour of the price, which is probably more persuasive to businessmen than anything else as to what occurred, would be relevant. The question of how far before and after is something that we will have to consider. We deny that there was an agreement and this has pertinency as to whether it does.

The Court: I am not going to go into the merits of this case, but I would be less than frank with you if I did not say that you will have a devil of a time convincing that jury that those letters were not writ-

*H. F. Barrett, for Government—Direct.*

ten with some common understanding. They are all written practically on the same day or within

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two days of each other and almost within the same text.

Mr. Morison: You are speaking of the circumstantial evidence.

The Court: I am talking about what I would feel if I were on the jury. Maybe that is what I am thinking about. That is where the case lies now.

Mr. Morison: That is the importance we think of what occurred.

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Mr. Whicker: Your Honor, may I point out this. In the Government case they have also introduced certain documents, price changes in 1955.

The Court: Yes. I do not think those are material.

Mr. Whicker: I take it your Honor holds this view on the Government's evidence that you will hold an open mind until you have heard the evidence of the defense.

The Court: Yes.

Mr. Gilmer: You want us to enjoy our dinner tonight.

The Court: Yes. All I intended to say—maybe I am going further than I should—was that I would be compelled to instruct a jury that if they believed that any agreement or understanding was entered into then no matter how quickly thereafter it was abandoned that would not absolve the defendants from guilt.

Mr. Morison: We understand that.

Mr. Karp: Or whether it was successful.

The Court: Yes.

*H. F. Barrett, for Government—Direct.*

Mr. Humrickhouse: It is evidence that is admissible to show an agreement and to show that there was not any agreement.

The Court: I am not going into prices in

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1955 and 1956 to show that.

Mr. Anderson: The Government has introduced a lot of documents in 1955 which I called your attention to.

The Court: I told you right now I consider them immaterial.

Mr. Karp: All we have done in those letters is showing letters in 1955 which showed their prices changed from 78, to show that there was a prevailing market price regardless of what was actually charged. That is all we were doing.

Mr. Whicker: The allegation is that it is a continuing agreement.

Mr. Karp: You don't have to prove that.

Mr. Whicker: Mr. Karp says he introduced those documents to show prevailing prices.

Mr. Karp: A prevailing quotation which was changed in 1955.

The Court: I don't want to discuss all the law right now, but I was warning counsel that they need not come in here with a carload of documents and expect to take three or four months to introduce them.

Mr. Rogers: We don't expect to bring in any carload of documents. We will write in the summary and authorities.

Mr. Karp: The summary cannot go in without showing

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how it was arrived at.

The Court: I think the people who made up the summary can show that. I am going to hold you

*H. F. Barrett, for Government—Direct.*

very closely to the time of this alleged conspiracy. In other words, the abandonment of a conspiracy once formed does not absolve the defendants from guilt. It may be considered a mitigation of the guilt or punishment but it certainly does not absolve them from guilt. It is the unlawful agreement that is the gravamen of the offense.

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AND THEREUPON the following Proceedings were had:

The Court: Good morning, gentlemen.

At adjournment yesterday evening, Mr. Barrett was on the witness stand.

The Marshal: Is Mr. Barrett in the courtroom?

Mr. Karp: If the Court please, before proceeding with Mr. Barrett, I would like to point out that yesterday Mr. Anderson stated he would admit for the record the length of time that W. A. Gordon had been manager of plate glass sales for Pittsburgh Plate Glass Company and Mr. Anderson stated that he would submit a document ~~or~~ check with a document which was at the hotel and make the statement for the record.

Mr. Anderson: Yes, sir, your Honor.

Mr. W. A. Gordon became manager of plate glass sales in Pittsburgh on or about July 1, 1951.

Mr. Karp: Thank you, Mr. Anderson. You say July 1, 1951?

Mr. Anderson: That is correct, sir.

Mr. Karp: Thank you.

With respect to Exhibits 55 through 63, inclusive, which were offered and admitted in evidence yesterday, those documents were photostats, with the originals in the possession of the Pittsburgh Plate Glass



*H. F. Barrett, for Government—Cross.*

Company. They were submitted with the understanding that the

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originals would be offered today.

Would the defendants stipulate and agree for the record that those exhibits, Government's Exhibits 55 through 63, be deemed admitted in evidence—that the photostats be deemed in evidence—with the full force and effect as though the originals were offered and admitted in evidence?

Mr. Anderson: I made that offer yesterday and the offer still stands.

Mr. Karp: I didn't know the offer was made in those terms, but I am glad to have such a stipulation to save the time of the reporter, jury and Court.

Mr. Anderson: That is why we made the offer.

Mr. Karp: Is the stipulation then in the record?

Mr. Anderson: It is entirely agreeable with us.

Mr. Karp: Is that agreeable with the Court, your Honor?

The Court: Yes, sir.

Mr. Karp: Thank you.

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H. F. BARRETT, called as a witness on behalf of the Government, having been previously sworn, resumed the stand and testified further as follows:

Mr. Karp: The Government has no further questions of Mr. Barrett.

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*Cross examination by Mr. Anderson:*

(For Pittsburgh Plate Glass Company and W. A. Gordon:)

Q. I have just handed you, Mr. Barrett, Government's Exhibit No. 63 concerning which some questions were asked you yesterday, and Mr. Karp asked you to tell the Court and the jury what it was.

**H. F. Barrett, for Government—Cross.**

If I understood your testimony correctly, you stated that these are the prices we used for a picture manufacturing company in Statesville. Isn't it correct that you stated that it was a fixture company? A. Yes, sir.

Q. What does a fixture manufacturing company do?  
A. Store fixtures, bank fixtures.

Q. Is the Morrison Furniture and Fixture Company of Statesville, North Carolina; a furniture manufacturer?  
A. No, it is not.

Mr. Anderson: I have just had marked Defendants' Exhibit No. 14, Pittsburgh Plate Glass Company, which is the photostatic copy of the subpoena *duces tecum* issued out of this Court on November 16, 1956, addressed to Pittsburgh Plate Glass Company.

I would like to offer it in evidence, your Honor.

Mr. Karp: I have no objection to its going in evidence, but are we receiving photostatic copies of

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documents being submitted by defendants. This has happened again, now, for the fourth time. I would like to know whether the Government will receive photostatic copies of evidence submitted by the defendants in the same manner as the Government has been supplying to each group of defendants such copies.

Mr. Anderson: I will certainly do my best to get photostats to the Government promptly.

Mr. Karp: We have heard that several times. I don't want to bicker. I want to be careful about that. We have heard that several times and we have not gotten them yet.

Defendants' (Pittsburgh) Exhibit No. 14, last above referred to, admitted in evidence.

Mr. Anderson: With your Honor's permission, I would like to read paragraph 2 of this subpoena

which called for the production before the Roanoke Grand Jury for documents or in lieu thereof lists showing during each of the years 1954 and 1955 the names of the company's High Point, North Carolina, and Roanoke, Virginia, warehouse customers of plain mirrors in each of the following classes, and the total amount of sales to each class of trade:

(1) furniture manufacturers;

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(2) store fixture manufacturers;

(3) glass or mirror jobbers;

(4) retail traders;

(5) each other class of trade regularly solicited or sold.

I have had marked for identification Defendants' Exhibit No. 15, which consists of the response of the Pittsburgh Plate Glass High Point warehouse to the subpoena *duces tecum*, more particularly to the paragraph of that subpoena which I just read, and it purports to show the list of store fixture manufacturer customers for the years 1954, 1955 and 1956, and it also shows the total dollar sales.

Mr. Karp: I object. If your Honor please, I object to the introduction of this document in evidence on the following ground: That the indictment in this case charges conspiracy to fix prices to furniture manufacturers. It does not charge an indictment to fix prices to any other class of trade. This class of trade is not concededly furniture manufacturers. It is, therefore, immaterial to the issues here, and will only confuse.

The Court: I understood Mr. Anderson to say that what he was introducing was a document or

*H. F. Barrett, for Government—Cross.*

statement furnished in response to a subpoena which you had issued.

Mr. Karp: Yes, sir, your Honor, a subpoena before

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the Grand Jury covered many things. The Grand Jury was investigating the mirror manufacturing industry and the flat plate glass industry. It had not returned an indictment. It was in process of investigation. It investigates many things which are absolutely immaterial to the indictment actually returned.

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The Court: But you asked the company to produce?

Mr. Karp: Not in this proceeding. He is introducing a Grand Jury subpoena.

The Court: I know he is.

Mr. Karp: That subpoena is not relevant to this particular issue.

The Court: The objection is overruled.

Mr. Anderson: I offer Defendant Exhibit No. 15 in evidence.

Defendants' (Pittsburgh) Exhibit No. 15, last above referred to, admitted in evidence.

By Mr. Anderson:

Q. Mr. Barrett, I hand you Defendants' Exhibit No. 15.

Mr. Anderson: I can save time, if your Honor please, I will read from this exhibit: "1954 Store Fixture Manufacturer Customers, Morrison Furniture and Fixture Company, Wade Manufacturing Company. 1955, Morrison Furniture and Fixture Company, John M. Tyndall Fixtures, Wade Manufacturing Corporation. 1956, Morrison Furniture and Fixture Company, John M. Tyndall Fixtures, Wade Manufacturing Corporation."



*H. F. Barrett, for Government—Cross.*

I have had marked for identification Defendants' Exhibit No. 16.

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By Mr. Anderson:

Q. Would you look at this exhibit, Mr. Barrett, please, sir? There are a number of pages to it. You might look at the whole exhibit, if you will. Will you tell the Court and the jury what these documents are? A. They are net prices to the furniture manufacturers served by the High Point, North Carolina, warehouse.

Q. What dates or date do these documents bear? A. December 31, 1955.

Q. Is that true with respect to each and all of the pages included in that exhibit? A. Yes.

Q. What is the significance of that date with respect to these, as you put it, net prices? A. That was the date the net prices went into effect.

Q. Can you tell from that document what discount off the PPG list price of April 25, 1950, was applied in arriving at these net prices? A. 77 per cent.

The Court: What was the date of that?

Mr. Anderson: The date of these documents, your Honor, is December 31, 1955.

By Mr. Anderson:

Q. Would you read the names of the companies that are referred to with respect to this exhibit?

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A. Caro Craft, Rocky Mount, North Carolina, Craftique, Incorporated, Mennen, North Carolina.

Mr. Karp: Excuse me, your Honor. These exhibits have not been offered in evidence yet, and the witness is reading from them.

Mr. Anderson: I am trying to establish a foundation so I can offer them, if your Honor please.



Mr. Karp: He is reading the substance of the documents without having offered them in evidence.

The Court: Yes, I think that procedure is a little irregular. If the witness can identify what it is and then you want to offer it in evidence, you can. The contents should not be before the jury unless it is in evidence.

Mr. Anderson: If your Honor please, I offer Defendant Exhibit No. 16 in evidence.

Mr. Karp: I object, your Honor, on the ground that it is offered for the purpose of showing what went into effect on December 31, 1955. The issue here is whether there was a conspiracy in 1954, this being offered solely for the purpose of what went into effect on December 31, 1955, the document is immaterial.

The Court: The objection is sustained.

Mr. Anderson: If your Honor please, I don't want

to labor the point, sir, but there are four Government exhibits admitted in evidence of the other companies that purport to show, I assume, the first change to an announced discount of 77 per cent. They are—

The Court: You did not object to them, did you?

Mr. Anderson: No, I did not, sir.

The Court: I told counsel yesterday afternoon what my viewpoint was about this case, and I was not going to allow the jury to consider changes in price lists made long after the date of this alleged conspiracy. This is the first objection that has been made and the first opportunity I had to rule on it. The objection is sustained.

If you had objected to some of the Government exhibits, you would have had them ruled out.

*H. F. Barrett, for Government—Cross.*

Mr. Anderson: If your Honor please, the reason I did not object to the introduction of the prices of the other companies in June or July of 1955 was the Government introduced them and the indictment charges a continuing conspiracy, sir.

The Court: The continuing conspiracy, as I pointed out yesterday, I agree had nothing at all to do with it except to bring the conspiracy within the statute of limitation if there was any question of being barred

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by the statute. No such question has been raised. This case revolves around what happened thereon or about or around the time of October 29 and 30, 1954. All the changes in prices long after that or any appreciable time thereafter are immaterial.

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Mr. Gibson: If your Honor please, doesn't the Court ruling on that evidence raise a rather substantial issue as to what we are charged with in this case? I wonder if this really ought to be considered in chambers.

The Court: I do not catch the point you are making, Mr. Gibson.

Mr. Gibson: As your Honor recalls, the indictment charges the defendants with a conspiracy alleged to have been engaged in from, on or about October 1954, with no terminal date. We raised an issue on the first initial motion on the first day of the trial, and I am not sure how that is disposed of, except that motion was overruled. As I understand the position the Court just stated just now in its ruling is that there is no issue as to a conspiracy some time in 1955—I am not sure as to just when—and there is no terminal date as such in the indict-

*H. F. Barrett, for Government—Cross.*

ment. We did seek some time ago in a motion for particulars as to what was meant, as to whether the Government charged whether there was a termination of the conspiracy and if so, when and what they meant by the indictment. We are still uncertain. I think your ruling is quite clear. I am not sure whether we are really protected as to the balance between your ruling on the one hand,

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and what the indictment says on the other.

The Court: The indictment says this under the heading, "Offense Charged".

"Beginning in or about October 1954, or prior thereto, the exact date being to the grand jurors unknown, and continuing thereafter, the defendants, the co-conspirators and others to the grand jurors unknown, have been engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in plain plate glass mirrors, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' as amended, 26 Stat. 209, commonly known as the Sherman Act."

That is what the charge is.

Mr. Anderson: If your Honor please, Mr. Karp whispered to me as Mr. Gibson was on his feet that he would be agreeable, if your Honor was willing, to hear this point argued further in chambers. It is a point of considerable substance to the defendants, and I would respectfully urge that we be heard further on it.

The Court: I will hear you, gentlemen. I thought I made my position clear yesterday afternoon to you.

Thereupon, the Court and Counsel retired to Judge's Chambers for a conference on the record, out of the hearing of the Jury Panel, and the following proceedings were had:

Mr. Karp: There is another lawyer who has not noted an appearance. I have no objection, provided he puts in an appearance and states who he represents.

The Court: Who is this?

Mr. Anderson: He is referring to Mr. Henry.

Mr. Henry: James B. Henry, Jr., for Pittsburgh Plate Glass Company.

The Court: Are you among counsel for Pittsburgh Plate Glass?

Mr. Anderson: He will not appear in court. He is one of our associates.

Mr. Karp: Could he state the firm with whom he is associated?

Mr. Henry: I am associated with Cahill, Gordon, Reindel and Ohl of New York City.

Mr. Humrickhouse: Your Honor, I don't think it is necessary. Mr. Rush is here. He has not appeared before. I want to tell Mr. Karp who he is.

Mr. Karp: Yes, if you have additional counsel.

Mr. Rush: I am not counsel at all. I am here in behalf of Mr. Williams on that motion to quash

the subpoena.

Mr. Humrickhouse: We all know him.

Mr. Karp: I am not finding any fault.

The Court: This is not an open meeting but I have no objection to Mr. Henry or Mr. Rush being present. When I call for counsel to be present, I mean counsel participating in the trial of the case.

Mr. Anderson: May I proceed, your Honor?

The Court: Yes.

Mr. Anderson: You read paragraph 11 of the indictment and the point that we feel is of considerable significance appears in the full text of paragraph 12. This paragraph, as you will note, reads, "The aforesaid combination and conspiracy has consisted of the continuing agreement, understanding and concert of action among the defendants, co-conspirators, and others to the grand jurors unknown, the substantial term of which has been that they agree to stabilize and fix prices for the sale by defendant corporations and co-conspirator mirror manufacturers of plain plate glass mirrors to furniture manufacturers by the following means and methods:

"(a) By agreeing upon and using identical list prices \* \* \* and

"(b) By agreeing upon and applying in pricing

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plain plate glass mirrors a uniform discount from said list prices, the amount of which discount, from time to time, has been changed by agreement among the defendants and the co-conspirator mirror manufacturers."

Now, we take the position, if your Honor please, that paragraph 11 standing by itself in substance charges a violation of the alleged crime in the generic terms of the statute. I could supply your Honor with a list of cases that any such indictment, to wit, one charging the offense in the generic terms of the statute, is not sufficient.

Secondly, paragraph 12, before you get down to the description of the two means and methods probably would constitute in our judgment a sufficient indictment to meet the constitutional point, but in our judgment it would invite a bill of particulars



because it does not tell how, et cetera, the conspiracy was carried out. So it is our thought that the government properly from their point of view, anticipating a motion for a bill of particulars, had (a) and (b) been left out, included (a) and (b) in an effort to avoid a motion for a bill of particulars.

If we are correct on this point, your Honor, and this is my first point, we say that the Government

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has to prove the whole of paragraph 12.

No. 2, the language of paragraph 12(b) by agreeing upon and applying in pricing a uniform discount, the amount of which discount from time to time has been changed by agreement, in our judgment must be proved. Since it has been alleged in the context of a continuing agreement beginning in or about 1954, and presumably by the allegation operating some time *in futuro* and from our point of view to the date of the return of the indictment. Even if there is some question of proof to the contrary, *arguendo*, we submit that under the indictment we have the right to introduce evidence that bears upon whether or not discounts are uniform, whether they have or have not been changed from time to time during the whole period of the indictment. I think in sum, your Honor, that is the position of not only Pittsburgh Plate Glass Company, but some of the other defendants, but they can express themselves.

The Court: Do any of the other defendants want to express themselves?

Mr. Gibson: If your Honor please, I raised the question to find out where we stand, really. In a word, are we charged in this case with the commission of a crime as of the date of this last offered exhibit

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as of December 31, 1955?

You may recall in the argument of many motions counsel have been very emphatic in their representations to the Court that we were very confident that we could prove active price competition almost from the very date, if not on the actual date, that we think the Government is talking about. We are going to present all the defense we can. We have continued to stress that the full structure of the competition will be shown year after year during the ensuing years. We don't know what it is that we are charged with as to the time. Specifically, we would have to read the indictment just in its words as if it charges us with a crime continuing after the amendment of the statute on July 7, 1955.

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The Court: I think I made it clear.

Mr. Gibson: I know the Court position, and I don't know whether that is an amendment or construction of the indictment so that we know what the issues are.

The Court: Does anybody else want to say anything?

Mr. Rogers: Your Honor, I want to say merely this. As your Honor knows, I am not an expert on this anti-trust law and don't purport to be.

The Court: Neither am I.

Mr. Rogers: I do want to say this: That if your Honor adheres to the ruling he has just announced, even though the Government may have put in a great deal of irrelevant matter, and we did not object to it at the time, that if we try to rebut it, that will be excluded—or try to rebut it, that will be excluded—on the grounds of relevancy is putting us at a considerable disadvantage.

*H. F. Barrett, for Government—Cross.*

Government counsel has put into the record a great deal of matter that we thought was irrelevant. We did not want to object because as your Honor well knows, a defendant who is always jumping up and objecting not only irritates the Court, but gives the jury the impression that he is trying to keep the real facts out.

Government counsel has in many instances gone far afield and we have undertaken to refute what he has

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done. He has objected and the question has come up then whether we should be allowed to refute it.

Let me give you just one illustration. When the witness for my client, Mr. Everett Mayes, was on the witness stand, Mr. Karp undertook to show by the witness, and took an awful lot of time trying to do it, that the price change on October 29, going to a discount of 78 percent, had the effect of being a 22 percent increase in the price of mirrors from the January 1954 price list.

Whether it increased it one percent or 22 percent or 50 percent, we thought was entirely immaterial. The point was, as we understood, that the charge was that we had conspired in October to increase prices, the extent of the increase being entirely irrelevant.

We didn't object because we didn't want to put ourselves in the position of trying to withhold facts from the jury. Then when we undertook on cross examination to show that the prices had been increased in May of 1954 and that the additional price charges on October 29, 1954 was merely 10 percent and, not a 22-percent increase, as the Government counsel had tried to make the jury believe, then came an objection from Government counsel and we got into quite a hassle.

*H. F. Barrett, for Government—Cross.*

It puts us at right much of a disadvantage where we have got to do either one of two things. Either make

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an objection or be precluded from offering testimony to refute erroneous impressions given by the Government evidence. As an old-time jury lawyer, your Honor is well aware of just what that means to us.

The Court: Yes. I am also well aware that it is to the advantage of the defendants in this case to confuse the record as much as possible and get as much irrelevant stuff in there to confuse the jury.

I dare say you would like to have everything in the world in, and I don't charge you with anything improper in that at all because that is perfectly legitimate, to confuse the jury as to what the real issues in the case are. But as I told you yesterday evening when we were talking in here, it was my expectation to instruct this jury when all the evidence is in that if they believe this agreement or understanding was entered into there at Asheville or wherever it might be, or if there was any agreement or understanding entered into about the time when this conspiracy was alleged to have begun, which is October 1954, they could disregard everything that happened after that. I told you that yesterday afternoon.

Mr. Anderson: Your Honor, I would like the record to show emphatically that our purpose is not to confuse you or the jury. I think our purpose is to give you

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the facts of the prices that were charged and that is all we have in mind. If I may just take one more moment of your time, please, and Mr. Karp is here—

*H. F. Barrett, for Government—Cross.*

and I want you to correct me, Sam, if I am wrong. Government Exhibit No. 63 purports, I think, to show a change in price with a penciled interlineation, 7/1/55, July 1, and the name of the company at the top of the page was Morrison Furniture and Fixture Company, which my attempt today through the witness on the stand was to show that it not a furniture company.

It is of great importance to our defense under our construction of this indictment that we show that our price did not go from 78 to 77 in July of 1955 when in the document that I am trying to get in now the date was December 31, 1955. The time lag sir, of this second price move, if I may so characterize it, is exceedingly important.

I think part of Mr. Karp's case might be that the unfortunate coincidence of the number of letters that are dated October 29, 1954, or October 30, or November 1. By the same token, in the next price move, I think the defendants, if your Honor please, should have the right to show that the time lag is quite remarkably different. It will go to any number of issues, the existence of the conspiracy, perhaps indeed the

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credibility of witnesses.

Mr. Karp: May I state the Government's position?

The Court: Yes, sir.

Mr. Karp: With respect to paragraph 11.

The Court: Mr. Anderson, I was not smiling at your argument. I was smiling at the expression of unfortunate coincidence of those letters being dated October 29.

Mr. Anderson: I am glad we can both smile at that.



*H. F. Barrett, for Government—Cross.*

Mr. Karp: With respect to paragraph 11 in which the Grand Jury charges that beginning in October 1954, or prior thereto, the exact date being to the Grand Jurors unknown and continuing thereafter, the defendants combined and conspired. As I understand it, this indictment is being construed by the Court—and the Court is the one to construe the indictment—in construing the terms “continuing thereafter” to mean that there was a conspiracy which continued but it is not construed to mean that the conspiracy continued beyond July 7, 1955 when the penalty provisions were changed.

We think that is an appropriate construction. It is a reasonable construction, particularly in view of the fact that the indictment does not state when the continuance ended but merely shows a continuance. Therefore, particularly in light of the amendment of the penalty that the indictment is being construed to charge

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a conspiracy in violation of the Sherman Act which existed at the time that the statute then provided; that is, the statute in effect on October 1954 and prior to July 7, 1955, the date of the enactment of the statute amending the penalty.

Now, as to paragraph 12, the burden of Mr. Anderson's remarks, as I understood them, was that the indictment charges two means: The agreement to use identical list prices, and the agreement to apply the list prices or to apply uniform discounts to such list prices.

I think it is quite clear, first, that if the Government proffers that in or about October 1954 an agreement was entered to apply a uniform discount, a 78 percent discount, off the 1950 lists, and that those lists were identical, then the Government has proved two means.

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If there is an agreement to fix a 78 percent discount off identical lists, then there must have been two agreements there or two parts of an agreement, first to use identical lists, and secondly, to apply identical discounts. So there the Government proves the two means.

In so far as proving every word of the indictment, that has been long held to be unnecessary. Nor is it necessary to prove every means. The Court in *United States against Nash*, the Supreme Court in the *United States*

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*against Nash*, which we will be glad to submit, *U. S. against Socony-Vacuum*, *U. S. against Boyd*, and many, many other cases, and the Supreme Court has said very clearly each means need not be proved. It is enough that one is proved, even though others are alleged. That is basic law.

Now, as to the "from time to time," the most that could be said is that assuming it is not proved, then it is mere surplusage and need not be proved, which the Court can disregard, and the jury can disregard. At most, as I read the indictment, the interpretation would be that it talks about a uniform discount from the list prices which from time to time had been changed—had been changed. It is a description of the nature of the thing.

The Court: Mr. Karp, what is your interpretation of the indictment? Are you agreeing with the Court's interpretation?

Mr. Karp: I am saying that this is our interpretation. I understood that it was the Court's interpretation with which we agreed.

The Court: Then there is no use arguing if you are in agreement with the Court.

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Mr. Karp: I am not arguing with the Court. I am presenting the position of counsel for the Government

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in light of what the defendants have said to the Court.

Mr. Anderson: If your Honor please, Mr. Karp, from his point of view, properly has raised the *Nash* case. I don't have all the facts clearly in mind, but I have read the case many times and I think it is dissimilar to this situation for this reason.

If I recall correctly, in *Nash versus United States*, the indictment alleged a number of means and methods, perhaps 12 or 15; the number, except the multiplicity, is not important.

There the Court, just as Mr. Karp stated, held that the Government did not have to prove all of them. I have no dispute with that case on its facts. In the context of this industry, if you please, it would appear to be established now that the pricing mechanism used in the mirror sales to furniture manufacturers involves the use of a list price, and the application of discounts, two things.

The Court: That is right.

Mr. Anderson: It is my point that to allege a conspiracy to fix the price of mirrors in the context of this pricing mechanism, *a fortiori*, you would have to have, as Mr. Karp has alleged here, the use of identical lists and the use of identical discounts in order to get a uniform price.

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The Court: That is right.

Mr. Anderson: I am saying, sir, in the context of this industry, he must prove both (a) and (b). He wrote this indictment, I assume. If we had (c), (d), (e), (f) and (g) down there, and they talked about

other alleged ways of implementing this conspiracy, my point would not be well taken for the very reason expressed in the Nash case.

I am saying in the context of this industry (a) and (b) must be proved. I think the Nash case is not in accord here.

Mr. Karp: The substantial term of which has been—

The Court: There is no question about it because you have all agreed that all these booklets that contain the list prices of these mirrors are identical. The Government has undertaken to show that you applied a uniform discount as a result of an agreement. The uniform discount must be the result of an agreement or understanding to do that.

It must not have been the result of what you called it—unfortunate coincidence.

Mr. Anderson: I would like to amend that, your Honor, on the record. A coincidence. I will not characterize it, if you please, sir.

The Court: If it were a mere coincidence,

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unfortunate or otherwise, and not the result of any agreement or understanding among these people, they would not have been guilty of any crime. But if they did agree to apply that uniform discount and applied it as the Government contends is shown by these letters, then the conspiratorial agreement has been completed.

Mr. Anderson: You see, your Honor, there is no doubt about the fact that the Government has introduced these letters that on their face purport to announce a discount of 78 percent. As Mr. Morison and others pointed out in the conference in your Honor's Chambers last evening, the defendants have forecast that we are going to offer, if you please,

evidence of actual price behavior because what the buyer pays is what I would regard to be price.

The Court: As I told you yesterday, I thought what the buyer paid at or approximately this same time has a bearing on the question of whether there had been any agreement and would probably be permissible, but not what he had paid a year later or what they paid eight or ten months later.

Mr. Anderson: We understand that, your Honor. I guess what it comes down to in summary is simply this: The defendants strongly urge you in complete respect not to interpret this indictment which is the thing we are

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defending against, and confining proof simply to this one apparent price move. That is what we urge you, sir.

We think that we are entitled in defense to introduce proof throughout the whole period in the light of the repeated use of the word "continuing," and particularly this "from time to time" reference that I have made earlier that appears in paragraph 12(b).

The Court: I can't agree with your viewpoint, Mr. Anderson. I think the case is very simple in its limits. Mr. Morison, do you want to say something?

Mr. Morison: Just for the record, sir, I would like to state for our defendants in this case that I interpret what Mr. Karp has now said and what the Court has said in effect in a single count of the indictment, charging count, he has now amended that to exclude what we were charged with having committed.

The effect of that is that we now know at this stage that there has been an amendment of the indictment which I do not believe that the Government has the power to do. Particularly is that important in view of the fact that this issue was raised early with the Court in a bill of particulars which we requested.



At that time, if Mr. Karp's theory of this case was proper, he would have stated that paragraph 12(b) was not relied upon as a part of the charge to which we were

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to answer, but was, as he put it, in the Nash case terminology, the immaterial evidence relative to other parts of paragraph 12.

If that is a true statement of the proposition, I contend that it is error and it is committed now.

Mr. Karp: I don't know what Mr. Morison means at all. Of course, the Government can't amend an indictment and is not amending an indictment. The indictment was returned by the Grand Jury. Mr. Morison knows that.

The Government is talking about how it construes the indictment and asks the Court to agree with the construction. As to terms, the indictment in paragraph 12 says, the substantial term of the conspiracy has been that they agreed to stabilize and fix prices. It alleges one conspiracy. The term is that they agreed by doing two things, naturally, that, they agree to a uniform discount off identical lists.

So when they agree to 78 percent discount off identical lists, what are they agreeing to? They are agreeing to quote to the customers a 78 percent discount off these lists and that is our agreement. We are going to charge them 78 percent off this list and they have agreed to both facets. Naturally it follows.

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Mr. Morison: You can stop right there, Mr. Karp, if you want to have a single count in the indictment. But you did not. You came along in paragraph 12(B) by saying "by agreeing upon and applying prices," coming down a line, "the amount of which

*H. F. Barrett, for Government—Cross.*

discount from time to time has been changed by agreement." Uniform discount.

We are here prepared to defend that. This is the totality of the charging that we are required to respond to. I contend, sir, that neither the Government, and with due deference, the Court can now amend the indictment which we are here facing. That seems to me to be the essence of our problem.

The Court: You think it is an amendment of the indictment. It is a construction of the charging indictment. That is all. I raised this question myself. Mr. Karp did not raise it. I raised it yesterday afternoon.

Mr. Humrickhouse: If your Honor please, will you permit me to ask a question? There will be no necessity for the proffer of additional proof in this line in order to save our point. If it is, we would like to proffer it in chambers.

The Court: I would not want to put it that broadly, Mr. Humrickhouse. I told you, you might

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offer evidence of prices actually charged on or close by the date of October, 1954.

Mr. Humrickhouse: I was speaking of after July, 1955.

The Court: Yes, I think so. I think there is no need for any further offer along that line.

Mr. Humrickhouse: Your Honor would rule it was inadmissible?

The Court: Yes, sir.

Mr. Humrickhouse: Thank you.

Mr. Whicker: Your Honor, I may be premature in this question, but is it your Honor's ruling that our evidence should be confined to a period of time prior to July, 1955?

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The Court: I think that is the maximum limit. The Court seems to have a different view of this indictment from that entertained by counsel for the defense and counsel for the Government.

Mr. Gibson: That disturbed us.

The Court: I may not be in agreement with either one of them.

Mr. Gilmer: Your Honor, on that point, since the act of a conspirator binds all, if an agreement can be proven, as I take it, on yesterday Mr. Karp took a July 1, 1955 example and tried to show that there was

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a price movement on that date to 77 by Pittsburgh Plate Glass Company. That was introduced for the purpose of showing that Pittsburgh went to 77 at that time.

Now in your Honor's ruling, are you saying that we cannot show that is not true?

The Court: What, that Pittsburgh did not go to 77?

Mr. Gilmer: Yes, sir.

The Court: No, I am not saying that.

Mr. Gilmer: Then if that is not your ruling, can't we introduce evidence to show that is not true, that the movement to 77 did not take place, until December, 1955, or even if it was December, 1956? To refute that particular thing, it seems to me we could introduce evidence to show that is not a fact.

The Court: I think you can always introduce any evidence to deny evidence that has previously been introduced.

Mr. Gilmer: I want to get that clear.

Mr. Anderson: If your Honor please, that was the sole purpose of offering the last defense exhibit, 16, to show this move took place in December, 1955,

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and to refute the very document Mr. Gilber has adverted, bearing the July 1 date.

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The Court: I don't keep up with the contents of all the documents being introduced, and I didn't know that was the specific purpose. But certainly it is a general proposition that if any testimony has been given against you, you can refute it.

Mr. Gilmer: That was the only purpose, to show the movement did not take place on July 1 but took place on December 31. I take it we could do that with regard to any evidence no matter what the date is? If the Government tries to prove a movement at a certain time, and it is not a fact, and we can show it is not a fact, we have a right to introduce evidence in that respect.

The Court: That is true.

Mr. Karp: Perhaps I ought to answer the statement.

The Court: It has to be made clear what the purpose is, to contradict evidence already introduced.

Mr. Karp: That is what I want to address myself to for the moment.

The Court: It is my opinion that a lot of this evidence that the Government has introduced is immaterial.

Mr. Anderson: We understand that.

The Court: In a sense you are penalized by not having objected to it. At the same time, even though

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you did not object to it, in all fairness, you should be allowed to deny it or refute it. I want to make it clear again I am not going to let this case run into a long, long trial with countless documents being introduced and prices quoted and everything that

*H. F. Barrett, for Government—Cross.*

happened long after the date of this conspiracy is alleged to have been entered into. I want that clear.

Mr. Anderson: I think we understand that, your Honor. When we resume in open court, for the exact purpose that Mr. Gilmer mentioned, I plan to re-offer this last Defendants' exhibit for the purpose of contradicting Government Exhibit No. 63.

The Court: I do not know what was in Government Exhibit 63.

Mr. Karp: I would like to say that Government Exhibit 63 contained two discounts. One 78, which was crossed off, and then a 77. The only purpose of introducing that exhibit was to show that a 78 per cent had been established and that it must have continued because thereafter it was crossed out and a new number put in, 77 per cent discount. So the offer was made for the purpose of showing that there was a 78 per cent discount which was established and which continued for some time. A 78 per cent discount was established and continued. It was crossed out and a

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new discount placed thereon. That applied also with respect to other exhibits concerning other defendants.

We introduced documentary evidence to show that the 78 per cent discount continued until a certain time. The time at which it ended or the time to which it continued was not important. The proffer was made in order to show that the 78 per cent discount was established and had continued as shown in the very letters of defendants. That is the line of our proof and only for that purpose.

Mr. Anderson: I am sure your Honor wants to adjourn this meeting. I just call your Honor's attention to one point and that is the document, Govern-



*H. F. Barrett, for Government—Cross.*

ment's Exhibit 63, through the lips of this witness now on the stand, has been shown that the price there did not apply to a furniture manufacturer.

Mr. Karp: I have not examined the witness. You have told me that.

Mr. Anderson: Of course.

Mr. Humrickhouse: That is Exhibit 63. Here are the proffered documents.

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Mr. Gilmer: It is hard to read that. He questioned the witness if that did not mean that on 7/1/55 they did not change to 77 per cent and we want to show that is not true.

Mr. Karp: We want to show that it was crossed out and another discount was established. I asked the witness was that 78 per cent discount in effect after it was established and continued until there was a change. He said yes, as I recall. All I wanted to show was that it was established and continued. The date was not important. The date of the 77 per cent was not important and we do not charge any conspiracy to fix prices in 1955. We do not charge that they agreed to conspire on a 77 per cent discount.

The Court: If the Government continues to introduce these exhibits that I think immaterial, and you do not object to them, you are going to be allowed to refute them, if you can. So it looks to me like the Court will have to raise its own objections.

Mr. Morison: I think we are in a position to object to them now, your Honor, because you made a ruling.

The Court: You are in a position to, but I might not think it was tactically sound to do it.

Mr. Gilmer: We have to refute those he has already introduced.

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Mr. Lee: At some time I would like to have a little time to clarify something. It could be the next time in chambers.

The Court: Do it now.

Mr. Lee: I think it was Exhibit 37, where we have all the Weaver Company price changes from January 1, 1953, down through the indictment. They are on one exhibit. Every change that we made on the announced price, not the selling price. What I was intending to do was to show that those price movements which he certainly by inference and by direct statement in his opening statement said we all moved the prices at the same time. There is only one time that we coincide with any other mirror manufacturer's price movement, and that was October 29, when we exercised our independent business judgment, but unfortunately it got us in court. That is the position I am in. You went from January 1, 1953.

Mr. Karp: I don't know. Are you testifying now?

Mr. Lee: No, that is the exhibit you put in.

The Court: What is it you want, Mr. Lee?

Mr. Lee: I just want to call the Court's attention to the fact that Mr. Karp brought in all of our price movements from January 1, 1953.

Mr. Karp: Pardon me. They are on one document.

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You have a document which you submitted your price movements. Included in that document is a showing that on October 29, 1954, you established a 78 per cent discount which continued thereafter and we used the document to show it.

The Court: Are you asking the ruling of the Court on something?

*H. F. Barrett, for Government—Cross.*

Mr. Lee: No. I just want to call the Court's attention to it, because it will come up later.

Mr. Gilmer: The Court said you can refute anything he introduced.

Mr. Lee: Mr. Karp had that document.

Mr. Joyce: I too am not an expert on antitrust laws.

The Court: I certainly am not, but I have an opinion about this case.

Mr. Joyce: Am I correct, and I am speaking for Virginia Mirror Company, that so far as evidence affecting Virginia Mirror Company is concerned, the failure of Virginia Mirror Company to introduce evidence to refute any continuing conspiracy existing beyond July 7, 1955, would not be interpreted or taken as in any way exposing Virginia Mirror Company to the amended statute? Are we safe in taking that position?

The Court: If I understand you correctly, I think

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you are.

Mr. Joyce: All right, sir. That was the one thing I wanted to be clear on.

The Court: I think I understand what you mean.

Mr. Anderson: Your Honor, Mr. Morison has just mentioned an important point. I would like to have Mr. Karp hear this. A companion civil case was filed about a week after the indictment in this matter was returned. The civil action covers the same period of time, purportedly—the language of the charge is identical—and I am not trying to engage in a discussion of the civil case at this stage, because it would be improper, but I can not help but state that in order to get injunctive relief, it is obvious they would have to show that this unlawful conspiracy alleged continued right up to the time that

the action was filed. Otherwise, they would be out of court in asking for injunctive relief.

The Court: I agree with that.

Mr. Karp: We allege a threat.

The Court: There might be no need for an injunction, but that would not prevent them necessarily from getting one. If they allege the agreement had been entered into, while it was no longer in active operation, they anticipated the possibility that it might be renewed,

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they would be entitled to an injunction. They would not have to prove it continued up to the time of the filing of the complaint. I say it might be a perfectly useless thing to ask for an injunction after the agreement has been abandoned, but that would not forbid them from getting one.

Mr. Morison: The only pertinency of the point is simply this: With reference to what I just said about the indictment, it is perfectly clear by the demand for injunctive relief, and the way in which that complaint is stated, saying it continues to the present time and unless enjoined will damage the Commonwealth and so forth, as a companion suit they do allege this thing continued.

I agree with your Honor if the proof in that case should be that one had not continued after it occurred, the injunction would be denied.

The Court: I don't get that analogy, Mr. Morison. The commission of the crime is a very definite thing. It may be over, the parties may have repented, they may have abandoned the conspiracy momentarily or immediately after entering into it. On the other hand, the civil action relates to a charge of an alleged continuation of illegal conduct.

Mr. Morison: Allege both, the agreement and its

*H. F. Barrett, for Government—Cross.*

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continuation.

The Court: I can't try that.

Mr. Morison: I agree with that. I say it had pertinency since they were both drawn by the same attorneys in the Department of Justice. The allegation they have in the complaint has bearing on section 12 of the indictment and that was my only point.

The Court: Don't let us argue any more.

Mr. Gibson: Judge, we will have full opportunity in a civil case to present what evidence will be relevant there.

The Court: Yes.

And thereupon, the Court and Counsel returned to the courtroom and the following proceedings were had:

Mr. Anderson: At this time, I would like to offer in evidence Exhibit No. 16 for the purpose originally offered, namely, to refute the evidence contained in Government's Exhibit No. 63.

The Court: Just a minute, Mr. Anderson. You offer as Defendants' Exhibit No. 16. You just said Exhibit 16.

Mr. Anderson: I am sorry, sir. Defendants' Exhibit 16.

The Court: All right, sir.

Mr. Karp: I object, your Honor, on the same ground I objected before, that this exhibit pertains

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to prices of December 31, 1955, which is not in issue here.

The Court: Let me see the exhibit.

Mr. Karp: The previous exhibits that the Government had offered were offered for the purpose of showing that on October 29, 1954, and November 1, 1954, there was a 78 per cent discount, which had continued for some time.



*H. F. Barrett, for Government—Cross.*

The Court: What is the date of this?

Mr. Anderson: December 31, 1955, in the upper right hand corner.

The Court: What does this show?

(Mr. Anderson approached the bench.)

By Mr. Anderson:

Q. Mr. Barrett, I hand you Defendants' Exhibit No. 16.

Mr. Karp: Is that exhibit admitted in evidence?

The Court: I told him he might question about it.

Mr. Karp: Thank you, your Honor.

By Mr. Anderson:

Q. I think you testified that the pages that constitute this exhibit are dated December 31, 1955, is that correct?

A. Yes.

Q. Do you know of your own knowledge what discount—what announced discount—was in effect to the furniture

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manufacturer customer named in this exhibit prior to December 31, 1955?

Mr. Karp: If your Honor please, I object on the ground that this witness testified yesterday that he had no knowledge of mirrors, that he had no knowledge of the April 1st list, that he had not written letters to furniture manufacturers, that he is not concerned with discounts or prices to furniture manufacturers.

The Court: If he doesn't know, he can say so very quickly.

Mr. Karp: He said he did not know yesterday.

The Witness: I am sorry, I do not know.

By Mr. Anderson:

Q. You do not know the discount that your warehouse was quoting to the furniture manufacturer trade during the period from, let us say, November 1954 to December 1955?  
A. 78 per cent.

Q. 78 per cent. Now, do you know, Mr. Barrett, when that discount was changed to another discount to the furniture manufacturer customers?

Mr. Karp: I object, your Honor, on the ground that the witness has already testified that he does not know what the prices are to furniture manufacturers.

The Court: Again, he can say he does not know. It is never a valid objection to a question to a witness

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that he has previously indicated he did not know the subject. He can say so again if he does not know it.

By Mr. Anderson:

Q. If he knows, he may answer, I gather. 'A. I don't know.

Q. Will you tell me, Mr. Barrett, what these documents which comprise Defendants' Exhibit No. 16 purport to be?

A. Net prices charged the furniture manufacturers.

Q. Looking at the first page on that exhibit, does it contain a reference to a discount?

Mr. Karp: I object, your Honor, on the ground that the document speaks for itself, and the witness has already stated a moment ago that he does not know what that means.

The Court: The objection is overruled.

Mr. Anderson: I am handing him this document to refresh his recollection.

The Court: The objection is overruled.

By Mr. Anderson:

Q. Looking at the first page of this document, do you see a reference to a discount? A. 77 per cent.

Q. Does that refresh your recollection with respect to the discount that the Pittsburgh Plate Glass Company,

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High Point Warehouse, was quoting on or about the date shown on the document? A. 77 per cent.

Q. So that is your testimony? A. Yes.

Q. Your testimony is, then, I take it, that these letters comprising Defendants' Exhibit No. 16 reflect a change in discount from 78 to 77 per cent to the furniture manufacturer accounts that are listed on the pages attached? A. Yes.

Mr. Anderson: I offer the exhibit in evidence, your Honor.

Mr. Karp: Same objection.

The Court: Are those furniture manufacturers?

Mr. Anderson: Yes, sir.

Mr. Karp: The same objection for the same grounds; the exhibit is dated December 1955.

The Court: I do not see the value of the exhibit because it simply shows that this witness' company, after establishing the 78 per cent discount on October 29 or October 30—

Mr. Anderson: November 1.

The Court: —kept it in effect until December 1955.

Mr. Anderson: Are you ruling that the offer is admissible?

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The Court: Yes, sir. You can put it in.

Mr. Karp: No objection on those grounds.

Defendants' (Pittsburgh Plate Glass Company and W. A. Gordon) Exhibit No. 16, last above referred to, admitted in evidence.

Mr. Gibson: Your Honor, may I ask a question of the Court?

The Court: Yes.

Mr. Gibson: Your ruling of the basis on which Defendant Exhibit 16 was admitted does not in the slightest change your ruling as to the issue, does it, sir?

The Court: No, sir.

Mr. Gibson: Thank you.

Mr. Anderson: I have had marked for identification Defendant Exhibit No. 17.

By Mr. Anderson:

Q. I hand you this exhibit, Mr. Barrett, and ask you if you know what it is? A. Purchase order from White Furniture Company, Mennen, North Carolina. Their order number CO2292, received in our office on November 2, 1954, covering plain mirrors.

Q. Would you just look at these papers and tell me if you are familiar with them? A. Yes, I am.

Q. You can identify this? A. Yes.

Mr. Anderson: I would like to offer in evidence, your Honor please, Defendant Exhibit No. 17, which consists of four pages, the first of which purports to be

a purchase order of White Furniture Company, Mennen, North Carolina, dated October 29, 1954, bearing a date stamp, "Received November 2, 1954," the order number being CO2292, covering a quantity of plate glass mirrors. Attached to this is copy of acknowledgment dated November 5, 1954, Pittsburgh Plate Glass Company, Manager Glass Department, to White Furniture Company, and it would

*H. F. Barrett, for Government—Cross.*

indicate on the carbon that Mr. Barrett wrote the acknowledgment.

Attached further are two order returns or invoices, one dated January 12, 1955, which contains a reference to this customer's number 2292, and secondly, the invoice dated January 20, covering a shipment pursuant to the same customer's order.

The Court: Let me see it, please, sir?

(Mr. Anderson handing document to the Court.)

Mr. Anderson: If your Honor please, I offer Defendants' Exhibit No. 17 in evidence.

The Court: Have you seen the exhibit, Mr. Karp?

Mr. Karp: Yes, I have seen the exhibit. I object to it on the ground that this pertains to an order made out October 29, 1954, which preceded the November 1, 1954 letter. It is made out before the customer was even aware of the change in discount to 78 per cent. Therefore I object to it, being immaterial.

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The Court: I think that goes to the weight of it rather than the admissibility. I examined it, and it is an order sent in by that customer. The order was dated October 29, which was Friday, was it?

Mr. Karp: Yes.

The Court: Unquestionably, of course, sent before they received the notice of the increase in prices.

Mr. Karp: Yes.

The Court: As I understand it, you are undertaking to show that it was honored at the old price?

Mr. Anderson: That is correct.

Mr. Karp: Naturally.

Mr. Anderson: I gather that you have admitted the exhibit in evidence?

The Court: All right, sir.

Defendants' (Pittsburgh) Exhibit No. 17, last above referred to, admitted in evidence.



By Mr. Anderson:

Q. How far is Mebane, North Carolina, located from High Point, North Carolina? A. Approximately 60 miles.

Q. Have you any experience as to how long it takes a letter deposited in the mails at the close of business hours on a given day to be received at High Point? Suppose the

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letter is mailed from Mebane and it is received at High Point. Would that take two or three days or would it take a day ordinarily, if you know?

Mr. Karp: I object.

Mr. Anderson: If you know?

The Court: He may answer.

The Witness: Overnight.

The Court: Can you explain why it was stamped as received three days after it was sent?

The Witness: No, sir, I cannot.

Mr. Anderson: I wish I could testify to that, Your Honor.

The Witness: I can qualify that, sir, if I may. I just happen to think of the circumstances in connection with this particular customer. He mails his orders to our salesman. Mr. Eagle, as a rule, comes into our office at the end of the week. It is mailed out to his home address. He lives out in the country. I think that would explain why that date is on there.

The Court: Mr. Barrett, did you have anything to do with approving or accepting orders?

The Witness: No. Mr. Hancock handles that, but I do acknowledge the orders.

The Court: Now I want to ask you something. This order is dated October 29. You did not send out

*H. F. Barrett, for Government—Cross.*

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your letter from your company until Monday, November 1. That is, your letter notifying the trade of the change in discount. But this letter appears to have been received the next day on Tuesday, although the order was given on the 29th of October. Were you honoring orders given before your letter sent out at the old price, that is, at the old price given on orders before your letter was sent out?

The Witness: Yes, sir.

By Mr. Anderson:

Q. Do you know that? A. I will go back to this, as I said yesterday. I don't know whether that letter was ever sent out by mail.

The Court: You mean the letter of November 1st?

The Witness: That is right. It may have been delivered by Mr. Hancock, as his usual practice, in calling on the customers.

By Mr. Anderson:

Q. As far as you know, it may have been mailed, it may have been delivered?

Mr. Karp: I object to the counsel testifying. The witness has already answered the question.

The Court: Let him ask the question. If he frames it objectionably, you can object.

Mr. Anderson: I have marked for identification,

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if your Honor please, Defendant Exhibit 18, and ask if you can identify that?

The Witness: Order from White Furniture Company.

*H. F. Barrett, for Government—Cross.*

By Mr. Anderson:

Q. Look through the document and tell me whether you can identify it, to save the Court's and jury's time? A. Yes.

Mr. Anderson: If your Honor please, Defendant Exhibit 18 is another order from White Furniture Company, dated October 29, 1954, the order number 2759, stamped "Received November 2, 1954, Pittsburgh Plate Glass Company, High Point, North Carolina," attached to which is an acknowledgement dated November 5, Pittsburgh Plate Glass Company, and attached to that is an invoice number 12365, covering a shipping date of December 1, 1954, pursuant to this customer's order.

If your Honor please, it is very similar to the last exhibit.

Mr. Karp: You have read it now. Have you marked it for identification?

Mr. Anderson: It has been marked for identification.

Mr. Karp: Has it been offered?

Mr. Anderson: Yes, I offer it in evidence.

Mr. Karp: Your Honor, it is all right if your Honor wants to so rule, but I would like to know what

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the ground rules here are. Whether counsel may walk over to the reporter, mark a document for identification, and read it before it gets in evidence?

Mr. Anderson: I offered it in evidence. I read it when I was offering it in evidence.

Mr. Karp: That is exactly my objection. You read the entire thing.

Mr. Anderson: You don't want me to offer something and not tell the Court what I am offering?

The Court: Do you object to it?

*H. F. Barrett, for Government—Cross.*

Mr. Karp: On the same ground, your Honor, that this is an order dated October 29, 1954, before the letter was sent out announcing the 78 per cent discount.

The Court: May I see it? The dates correspond exactly with the previous one.

Mr. Anderson: That is right. I offer it in evidence.

Defendants' (PPG's) Exhibit No. 18, last above referred to, admitted in evidence.

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By Mr. Anderson:

Q. I hand you, Mr. Barrett, Defendants' Exhibit No. 19 and ask if you can identify it. A. Yes, I can.

Mr. Anderson: If your Honor please, Defendants' Exhibit No. 19 also purports to be a purchase order of White Furniture Company.

The Court: Wait a minute. Does Mr. Karp have a copy of that?

Mr. Anderson: Yes, sir.

The Court: Has he identified it so he can object before you read it?

Mr. Anderson: Yes. May I proceed, your Honor?

The Court: Yes.

Mr. Anderson: Defendants' Exhibit No 19 is another purchase order from White Furniture Company, Order No. 2291, dated October 29, 1954, stamped "Received November 2, 1954," calling for a quantity of plate glass mirrors. Attached to the order is a copy of Pittsburgh Plate Glass Company acknowledgment dated November 5, 1954.

Also attached are copies of two invoices, one No. 13306 covering a shipment pursuant to this order dated December 1, 1955, and finally another invoice, No. 13974, covering a shipment pursuant to this order dated January 12, 1955.

*H. F. Barrett, for Government—Cross.*

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I offer the exhibit in evidence.

Defendants' (Pittsburgh) Exhibit No. 19, last above referred to, admitted in evidence.

The Court: Do you have a number of those, Mr. Anderson?

Mr. Anderson: I have six.

The Court: I think we better let the jury take a little recess.

Gentlemen of the jury, before you go out, I want to emphasize one thing: That is the necessity of not talking to anybody about the case or of any association, even social associations, with anybody who has any connection with the case.

There is a myriad of lawyers around here, and officers of these companies. Try to avoid coming in any contact with them at all. It is not that I distrust you in any way, I assure you of that. I certainly do not distrust counsel or any of the persons who happen to be present. But it is not at all fitting that the jury should have any contact or association with anybody connected with the case. It is entirely fitting that they should hold themselves aloof in every way. Do that, please.

Mr. Karp: Before we recess, may I make a request?

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There is a witness here, Mrs. Westcott, who is Executive Secretary of the Mirror Manufacturers Association. She has been subpoenaed by the Government. She has been here for about two days now. We expected to put her on rather expeditiously, but in view of the fact that defendants have been presenting their material in the course of our examination, my time calendar has gotten off.



*Minita Westcott, for Government—Direct.*

Mrs. Westcott has a sick husband in Chicago, very seriously ill, she tells me, and she wants to leave to go home. I certainly don't want to inconvenience her in this case. I wondered whether, after recess, Mr. Barrett could be excused for a moment and we could put Mrs. Westcott on out of order.

We will introduce certain documents and ask her not too many questions and it should not take too long if cross examination is limited.

Mr. Anderson: We would be glad to oblige, your Honor.

The Court: All right.

Gentlemen, we will take a recess.

(A short recess was taken.)

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Mr. Carlson: Your Honor, Mrs. Westcott is here. She is the lady about whom we talked just before the recess. I would like to call her at this time.

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MINITA WESTCOTT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Carlson:*

Q. Would you state your name and address for the record, please? A. My name is Minita Westcott, 2217 Tribune Towers, Chicago, Illinois.

Q. Directing your attention particularly to the period 1950 to 1954, have you been or were you at that time employed by or connected with an organization known as the Mirror Manufacturers Association? A. Yes, sir.

Q. Would you tell the Court and jury what your connection with that association was during that period and what your duties were? A. Yes, sir. I am executive secretary

*Minita Westcott, for Government—Direct.*

of the Mirror Manufacturers Association. I handle all of the activities of the Association, including meetings and all sorts of activities—committee meetings, board meetings, conventions, our trade show, and other activities like commercial standards, federal specifications, trade practice conferences, and so on.

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Q. Will you speak up a little? A. Yes, I will be glad to.

Q. Does that include attendance at and duties in connection with annual meetings of the Mirror Manufacturers Association? A. Yes, sir.

Q. Directing your attention to the same period, Mrs. Westcott, I would like to ask you if you can state whether or not the companies I will name were, during the period 1950 through 1954, members of the Mirror Manufacturers Association. Galax. A. Yes, sir.

Q. That is Galax Mirror Company. A. That is correct.

Q. Stroupe Mirror Company. A. Yes, sir.

Q. Weaver Mirror Company. A. Yes, sir.

Q. Virginia Mirror Company. A. Yes, sir.

Q. Carolina Mirror Corporation. A. Yes, sir.

Q. Mount Airy Mirror Corporation. A. Yes, sir.

Q. Directing your attention again to the same period,

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Mrs. Westcott, 1950 to 1954, was Pittsburgh Plate Glass Company present at or represented at annual meetings of the Mirror Manufacturers Association? A. Yes, they were.

Q. Do you recall by whom they were represented? A. They were represented by several gentlemen. Mr. W. A. Gordon or Mr. Samuel J. Prichard.

Q. During this entire period? A. Yes.

Q. Was Pittsburgh Plate Glass Company at one time a member of the Mirror Manufacturers Association? A. They were associate members of the Association.

*Minita Westcott, for Government—Direct.*

The Court: You said they were or are?

The Witness: They were.

By Mr. Carlson:

Q. Until what date?

Mr. Humrickhouse: Objection, your Honor, as being contrary to your Honor's ruling as to the scope of inquiry in this indictment. She has said from the period 1950 through 1954 the Pittsburgh Plate Glass Company was not a member.

The Court: Until 1954.

Mr. Humrickhouse: She said from the period 1950 through 1954 they were not. It seems to me that is sufficient inquiry. I object to the question as to

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when they were members previous to that.

The Court: Yes. I do not think it is important when they were a member previous to that.

Mr. Carlson: I was intending to develop, your Honor, the relationship of the parties. It has already been brought out from the witness that Pittsburgh Plate Glass Company was host at meetings during this period and was present at meetings during this period.

The Court: That is right.

Mr. Carlson: I was intending to go into the past relationships of the parties to show why they were hosts and why they appeared at the meetings.

The Court: It seems to me it is immaterial. I mean the dates are immaterial. Of course, the question of their association is material. The association is perfectly obvious.

Mr. Carlson: Does the question stand, your Honor?

The Court: No. The objection is sustained.

*Minita Westcott, for Government—Direct.*

By Mr. Carlson:

Q. Again directing your attention to the period 1950 to 1954, Mrs. Westcott, how were the expenses met for costs incurred in the course of annual meetings during that period? A. Principally by registration fees on the part of those attending. Most of the expenses were met that way.

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Q. You have stated, I believe, that Pittsburgh Plate Glass Company was a host during this period at these meetings. Would you state to the Court and jury what you meant by that? A. Yes. At each meeting of the Association, there are two held each year in the spring and fall, and Pittsburgh Plate Glass Company is the host at either the cocktail party or the entertainment for the dinner at each of the meetings. That is, they are host for one at one time and the host for the other event at the other meeting of the year.

Q. I don't know if you made it clear or not, who pays the expense of those parties, Mrs. Westcott. A. Pittsburgh Plate Glass Company pays the expense of one party at each meeting.

Mr. Carlson: I have had marked for identification Government's Exhibit No. 64, which is a document submitted to the Grand Jury by Mirror Manufacturers Association.

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By Mr. Carlson:

Q. Mrs. Westcott, I hand you Government's Exhibit No. 64 and ask if you can identify it? A. Yes. This is the program for the 1954 annual meeting of the association held at the Grove Park Inn in Asheville, North Carolina.

Mr. Carlson: I offer Government's Exhibit No. 64 in evidence.

*Minita Westcott, for Government—Direct.*

(Government's Exhibit No. 64, last above referred to, admitted in evidence.)

Mr. Carlson: I would like to call the jury's attention to the cover of the Mirror Manufacturers Association document which Mrs. Westcott has just identified, Government's Exhibit No. 64, which states, "Mirror Manufacturers Association, 1954 Annual Meeting and Exhibit, Grove Park Inn, Asheville, North Carolina, Sunday, Monday, Tuesday, Wednesday, October 24, 25, 26, 27, 1954."

In the same document, under Wednesday, October 27, 1954, the Plate Glass Manufacturers Viewpoint, E. C. Walbridge, Libby-Owens-Ford Glass Company; W. A. Gordon, Pittsburgh Plate Glass Company.

This has been offered, your Honor.

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By Mr. Carlson:

Q. Directing your attention to Government's Exhibit No. 64, I ask you to observe the last date of the meeting as shown in that exhibit.

Can you state what the date of the last day of the meeting is? A. October 27, 1954.

Q. And that meeting continued to the night time of that date? A. Yes. We had the meeting—no, not through luncheon. We stopped at luncheon as far as the formal session is concerned.

Q. Was there entertainment at night? A. Yes, there was a party that evening.

Q. That is Wednesday. A. Wednesday, yes, sir.

Q. October 27th? A. Yes, sir.

Q. And the meeting would then break up, would it not? A. Yes, sir.

Q. Sometime late Wednesday night, October 27, or early Thursday morning, October 28? A. Yes, sir.

Q. The people attending that meeting would then leave and depart for their respective residences on Wednesday



*Minita Westcott, for Government—Direct.*

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evening, October 27, or Thursday morning, October 28; is that correct? A. Yes, sir; that is correct.

Mr. Carlson: May I pass this to the jury, your Honor?

The Court: Yes, sir.

(Government's Exhibit No. 64 was handed to the jury.)

Mr. Carlson: Shall I continue, your Honor, while the jury is looking at the document?

I have had marked for identification Government's Exhibit No. 65. This is a document submitted by Mirror Manufacturers Association in response to Grand Jury subpoena.

By Mr. Carlson:

Q. Mrs. Westcott, I hand you Government's Exhibit marked for identification No. 65 and ask if you can identify it? A. Yes, sir. This is a list of the member registrations at our 1954 annual meeting at the Grove Park Inn, Asheville.

Q. Does the exhibit also contain a non-member list? A. Yes, sir, that is right. That is what that is.

Mr. Carlson: I offer Government's Exhibit No. 65 in evidence.

Government's Exhibit No. 65, last above referred to, admitted in evidence.

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By Mr. Carlson:

Q. I will hand you Government's Exhibit No. 65, so you may use it, if you wish, to refresh your recollection.

Can you state, Mrs. Westcott, who was present at the October 1954 annual meeting of the Mirror Manufacturers

*Minita Westcott, for Government—Direct.*

Association representing Galax Mirror Company? A. Yes, sir. Mr. J. A. Messer, Sr., and Mr. J. A. Messer, Jr.

Q. Can you state who was present representing Stroupe Mirror Company? A. Mr. Robert E. Stroupe.

Q. Can you state who was present representing Weaver Mirror Company? A. Mr. and Mrs. R. E. Weaver.

Q. Can you state who was present representing Virginia Mirror Company? A. Mr. K. H. Hearn.

Q. Can you state who was present representing Carolina Mirror Corporation? A. Ralph G. Buchan.

Q. Would you spell that, please? A. B-u-c-h-a-n.

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Q. Can you state who was present representing Mount Airy Mirror Company? A. Mr. J. M. Cheek, Jr.

Q. Can you state who was present representing Pittsburgh Plate Glass Company? A. Mr. R. H. Burroughs, W. A. Gordon, P. A. Ketchum and Olen F. Levell, Jr.

Q. Mrs. Westcott, was Edd F. Gardner present at this meeting? A. His name is not on this list.

Q. Do you recall whether or not he was present? A. I do not know. I would think it would be here if he were.

Q. Do you know whether the Lenoir Mirror Company was represented at this meeting? A. No, sir, I think not.

Q. Was Lenoir Mirror Company a member of the association at this time? A. No, sir.

Q. Directing your attention to the period 1950 through 1954, was the Lenoir Mirror Company a member of the association? A. No, sir.

Q. Do you recall whether Mr. A. G. Jonas was present or not?

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A. No, sir. I have not seen Mr. Jonas in many years.

Q. Would he have any occasion to be there if his company was not then a member? A. I am not sure. I don't know, but I don't recall seeing him there.

*Minita Westcott, for Government—Cross.*

Mr. Carlson: I have no further questions, your Honor.

*Cross examination by Mr. Gilmer:*

(For Carolina Mirror Corporation and Edd F. Gardner:)

Q. Mrs. Westcott, you would recall seeing Mr. Gardner if he were there? A. Yes, sir. I know Mr. Gardner.

Mr. Karp: She testified that he was not there.

By Mr. Gilmer:

Q. There is one other thing I want to ask you. I notice on this banquet program it seems that the cocktail party was held this particular year by Pittsburgh Plate Glass Company, is that right? A. Yes, sir.

Q. And the banquet was held according to this program by Libbey-Owens-Ford Glass Company? A. The Libbey-Owens-Ford Glass Company paid for the entertainment at the banquet that year.

Q. You mean they alternate annually, too?

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A. Yes.

Q. Who is Libbey-Owens-Ford Glass Company? A. They are manufacturers of plate and window glass located in Toledo. The main office is at Toledo.

Q. Is that a competitor of Pittsburgh Plate Glass? A. Yes, sir.

Mr. Carlson: I object, your Honor. That matter is not in issue.

The Court: She may answer.

By Mr. Gilmer:

Q. I would like to ask you another question. According to this program, on the program for Wednesday, October 27, under "Furniture Buyer—Graham Morrison, of Mor-

*Minita Westcott, for Government—Cross.*

rison Furniture Company." That is not counsel in this case. A. I don't believe so.

Q. It is not this gentleman right here? A. No.

Q. Who was present at this meeting representing Libbey-Owens-Ford? A. I do not have the list now.

Mr. Humrickhouse: May I hand her my copy?

(Government's Exhibit No. 65 was handed to the witness.)

Mr. Gilmer: Surely.

The Witness: Thank you.

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The Court: What is the purpose of that question, Mr. Gilmer?

Mr. Gilmer: I would just like to show that there were two different places of Libbey-Owens-Ford represented at that meeting.

The Court: You would like to show what?

Mr. Gilmer: I would like to show that there are two different places of Libbey-Owens-Ford, according to this program, were represented at this meeting and the number of people representing Libbey-Owens-Ford, a competitor of Pittsburgh Plate Glass Company.

The Court: The witness has said that Libbey-Owens-Ford representatives were there and some of the names of the representatives are on the program.

Mr. Gilmer: I had not heard the witness say that.

The Court: She said Libbey-Owens-Ford furnished the entertainment.

Mr. Gilmer: Yes, sir. I simply asked her who was there representing that Company.

The Court: I still want to know the pertinency of who was there.

*Minita Westcott, for Government—Cross.*

Mr. Gilmer: I just want to show it was nothing sinister, your Honor, about a competitor being there. They showed only that Pittsburgh Plate Glass Company was there.

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The Court: Pittsburgh Plate Glass Company is the only one involved in this case. That is the reason they showed it.

Mr. Carlson: That is right, your Honor.

Mr. Gilmer: That is right.

The Court: A man named Walbridge was there representing Pittsburgh Plate Glass Company.

The Witness: Mr. Walbridge is not from Pittsburgh Plate Glass Company.

The Court: I meant Libbey-Owens.

The Witness: I don't think he was there.

The Court: He made a speech, anyway.

The Witness: Yes, sir.

Mr. Gilmer: You do not have the one with the list, do you?

The Court: No, I don't have a list of representatives.

Mr. Gilmer: It is in the exhibit, anyway, your Honor.

The Court: Mr. Walbridge, representing Libbey-Owens-Ford, and Mr. Gordon, Pittsburgh Plate Glass Company, made talks presenting the plate glass manufacturers' viewpoint.

Mr. Karp: Reference was made to the list, your Honor, of those who were present.

Mr. Gilmer: That is all I wanted to ask.

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By Mr. Morison:

Q. Mrs. Westcott, with reference to Government's Exhibit No. 65, which is a list of the member registration,



*Minita Westcott, for Government—Cross.*

you testified, I believe, that Mr. J. A. Messer, Sr. and Mr. J. A. Messer, Jr., were present representing Galax Mirror Company, and Mr. J. M. Cheek, Jr., was there representing the Mount Airy Mirror Company. Do you know when these gentlemen arrived and when they departed? A. No, sir.

Q. Do you know whether or not in fact they stayed there through the entire period of the convention? A. No, sir.

Q. You have no information then about the time of departure? A. No, sir.

Q. Do you recall from your own memory whether they were present at some time there? A. Yes. They were present at the meeting, but I don't know when they left.

Mr. Morison: Thank you.

Mr. Humrickhouse: May I ask one question, your Honor, about Exhibit 65.

By Mr. Humrickhouse:

(For Pittsburgh Plate Glass Company and W. A. Gordon:)

Q. Mrs. Westcott, looking at Exhibit 65, how many

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non-member companies were represented, and would it be fair to say that those non-member ones were suppliers of material or tools or supplies to the members of the Association? A. Yes, sir.

Mr. Carlson: Objection, your Honor.

The Witness: There are 19 listed here. They are suppliers to the industry.

Mr. Humrickhouse: Thank you. That is all.

The Court: Do you want to ask something, Mr. Lee?

Mr. Lee: Yes, if your Honor please. I want to first show Mr. Karp this document. If your Honor

*Minita Westcott, for Government—Cross.*

please, I have not had an opportunity to have copies of this made that I want to ask the witness questions concerning, and introduce. I was just showing it to Mr. Karp in advance.

Mr. Karp: And you are not giving us a copy, is that your point?

Mr. Lee: I have not had an opportunity to do so, Mr. Karp. I shall be delighted to give you a copy.

Mr. Karp: Very well.

The Court: Go ahead, Mr. Lee.

Mr. Karp: I have no objection to the admission of this in evidence.

Mr. Lee: It is a bill from the Mirror Manufacturers

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Association to the Weaver Mirror Company. The purpose of it is to show that Mr. and Mrs. Weaver were both there and the child with them. It ties into my opening statement in what I intend to prove concerning Mr. Weaver's health and his activities in the Asheville meeting.

The Court: The bill shows he was there and the witness already testified.

Mr. Lee: Yes, sir, but this was one other on it.

By Mr. Lee:

(For Weaver Mirror Company, Inc.):

Q. Mrs. Westcott, I show you Defendants' Exhibit No. 20. Do you recognize that? A. Yes, sir.

Q. I see by this that the registration fee was charged Mr. R. E. Weaver and Mrs. R. E. Weaver, is that correct? A. That is correct.

Q. On the program which is Government's Exhibit 64 on the afternoon of Wednesday, October 27, there is shown 2:30 p. m. trip to Ladies Homespun Shop. A. That is right.

Q. Is that what we commonly refer to as the Belmont Estate? A. No, that is the Biltmore Shops where they make

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the woollens that are so famous all over the country.

Q. Where was the trip to the Belmont Estate? A. I don't recall when they had that. It is Biltmore. Yes, here it is, Mr. Lee. On Tuesday afternoon.

Q. I show you Defendants' Exhibit No. 20 and show you extra tickets to Biltmore, \$3. A. Yes.

Q. Do you know for whom that ticket was procured? A. No, I don't, I am sorry.

Q. Do you remember or not seeing the son of Mr. Weaver there, the young son? A. The little boy?

Q. Yes. A. I think he was there.

Q. Was that the ticket for him? A. It might have been. I am sorry I can't say, because I didn't sell the ticket and it doesn't specify who the ticket is for. It merely says one extra ticket.

Q. But he was billed for an extra ticket. A. Yes.

Q. As part of the registration fee, Mr. and Mrs. Weaver got a ticket to the Biltmore? A. Yes.

Mr. Karp: We are not charging Mr. Weaver's son with implication in this indictment.

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The Court: I do not know what the purpose of this is.

Mr. Lee: The purpose is that I am going to show that at the time of this particular afternoon Mr. and Mrs. Weaver and the son were at the Biltmore Estates.

The Court: What particular afternoon?

Mr. Lee: That particular afternoon—

The Court: Certainly Mrs. Westcott was not nursemaid to every child that was at the hotel and

*Minita Westcott, for Government—Cross.*

that convention. She would not know anything about it.

Mr. Lee: We are not contending that. She did know about the extra charge.

I offer Defendants' (Weaver) Exhibit No. 20 in evidence.

Mr. Karp: No objection.

(Defendants' (Weaver) Exhibit No. 20, last above referred to, admitted in evidence.)

By Mr. Joyce:

(For Virginia Mirror Company, Inc.):

Q. May I ask, Mrs. Westcott, if you can tell the Court and jury about how many mirror manufacturing concerns there are in this country? A. No, I can't tell you how many there are. In terms

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of the Census Bureau, they think there are about 400.

Q. Will you tell the Court and jury about how many of these are members of the Association?

Mr. Carlson: Your Honor, this is getting pretty far afield.

The Court: I know it is, but let her answer the question. We will get over it quicker.

Mr. Joyce: Yes, sir. I will not consume a lot of time.

The Witness: At the present time about 30 or 32 are members of the Association.

By Mr. Joyce:

Q. Did you always have the meetings at Asheville? A. No, sir. We have had them all over the country.

Q. You alternate with different sections of the country? A. Yes, sir.

*H. F. Barrett, for Government—Cross.*

Mr. Joyce: No further questions.

The Court: Is that all?

Mr. Carlson: Yes. No further questions.

The Court: You are excused, Mrs. Westcott.

(Witness excused.)

The Court: I guess you want Mr. Barrett back, do you not?

Mr. Anderson: Yes, sir.

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H. F. BARRETT, recalled as a witness on behalf of the Government, having been previously sworn, testified as follows:

Mr. Anderson: May I proceed, your Honor?

The Court: Yes, sir.

*Cross examination (resumed) by Mr. Anderson:*

(For Pittsburgh Plate Glass Company and W. A. Gordon:)

Q. I hand you Defendants' Exhibit (Pittsburgh Plate Glass Company) No. 21, and ask you, Mr. Barrett, whether you can identify it. A. I can.

Mr. Anderson: Defendants' Exhibit No. 21, gentlemen and the Court, is an invoice covering shipment dated November 16, 1954, No. 10934, to B. F. Huntley Furniture Company, Winston-Salem, North Carolina. I offer it in evidence.

Mr. Karp: I object, your Honor, on the ground that there is no order attached to it. There is no evidence showing the basis of the order, the circumstances of the order, whether the order pertains to any previous arrangement or previous orders concerning the shipping of mirrors.



*H. F. Barrett, for Government—Cross.*

The Court: Let me see it, please.

(Counsel hands document to the Court.)

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Mr. Karp: On the face it says date of order, but the order is not attached or any of the circumstances surrounding it.

The Court: This is not plain plate glass.

Mr. Karp: I was just going to suggest that this is not obviously plain plate glass.

The Court: Edging, something else.

Mr. Karp: Four holes.

Mr. Anderson: Does the Government contend, your Honor, and if it does, this comes as a surprise to me, if we show the pricing of the plate glass mirror, even if it includes edge work, that is outside of the scope of the indictment?

The Court: The trouble is that paper in your hand does not show.

Mr. Anderson: I think if the Court would indulge me the opportunity to question the witness about it and give him a pencil and paper, we can decipher the exhibits on here and reduce the price of the mirrors shown to the mirror portion alone.

The Court: Perhaps you can. You may try it.

Mr. Karp: Your Honor, he has testified that he has had no contact with mirror manufacturers, that he does not know anything about pricing, that he has not written any letters, that he has no knowledge of the

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April 1st list, and that he has not at all discussed discounts with furniture manufacturers. I think on the basis of the testimony of the witness himself, he is disqualified of having any knowledge concerning these discounts.

*H. F. Barrett, for Government—Cross.*

Mr. Anderson: Let us find out, Mr. Karp, if he is qualified.

Mr. Karp: He has already testified he was not.

The Court: Go ahead and ask your questions.

By Mr. Anderson:

Q. I hand you Defendants' Exhibit 21 for identification, a tablet and a pencil, sir. Is the size of the mirrors that are shown on this document 14 by 20? A. It is.

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Q. Is the list price for a 14 by 20 plain plate glass mirror \$7.10? A. It is.

Q. Would you figure a discount of 80 per cent off that list price and tell me what figure you arrive at?

The Court: Let the witness figure what the discount was. Don't you tell him what the discount is.

Mr. Anderson: I am sorry, your Honor.

Mr. Karp: He has already told him.

The Court: I know he has, that is the reason I spoke to counsel.

Mr. Anderson: I did not mean to lead the witness.

Mr. Karp: May I ask what book the witness is using, if any, or is he doing it through his head?

Mr. Anderson: I handed him a copy of the Pittsburgh Plate Glass April 25, 1950, list price which you introduced in evidence yesterday. This is not a marked copy. I will use the original if it makes any difference, Mr. Karp.

The Court: What is the amount of that statement, \$10 and what?

Mr. Anderson: The amount is \$10.80. I also invite your Honor's attention to the fact that under the column headed "List" a figure of \$2.16 is shown.

*H. F. Barrett, for Government—Cross.*

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By Mr. Anderson:

Q. Handing you Defendant PPG Exhibit No. 21, Mr. Barrett, can you break down the plain mirror portion of the cost of the mirrors that are listed on that exhibit? A. Yes, I can.

Q. What is the cost per individual mirror? A. A dollar and 42 cents without fabrication.

Q. A dollar and 42 cents without fabrication. How did you arrive at that figure? A. 80 per cent.

Mr. Karp: I object, your Honor, and move to strike. He has asked him how he arrived at the figure. Mr. Barrett has clearly testified previously that he had nothing to do with the figures.

The Court: Strike out his answer, because the calculations were in reality done by counsel. All he had to do was a little multiplication. If you have any more papers like that, you hand him the bill and let him work it out.

By Mr. Anderson:

Q. Mr. Barrett, in order to correct—I don't want to use the word implication because I don't mean it in that tone, Mr. Karp—but statements you have made, did you intend in your testimony yesterday or today at any time to give this jury and this Court the impression that you are not

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familiar with the method that your warehouse employs in pricing mirrors in their sales to furniture manufacturers?

Mr. Karp: I object to that.

The Witness: It was not my intention.

The Court: He may answer.

The Witness: It was not my intention because I do figure the net prices to the accounts after I have been given discounts.

*H. F. Barrett, for Government—Cross.*

By Mr. Anderson:

Q. Do you actually figure the prices that are shown on invoices or order returns that are sent to furniture manufacturers? A. I do. That is my handwriting on that return.

Q. This is your handwriting on Defendants' Exhibit for identification No. 21? A. That is my handwriting.

Q. Is it correct, then, that you figured the price that is shown on here? A. I did.

Q. Would you go on with your calculations? Does this order return show the quantity ordered is five mirrors, size 14 by 20? A. It does.

Q. Number 430. Does that refer to the furniture manufacturer's number of his furniture suit, or what does

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it refer to? A. That refers to his furniture suit.

Q. What do the initials capital AE mean? A. All edges.

Q. And the next word "POL," does that mean polished? A. Polished.

Q. All edges polished. And does this document state four holes? A. Four holes.

Q. Now, if you will, sir, take your time, but tell us how you figure, or how you arrived at the price per mirror shown on this document, and tell the Court and the jury if there are components that must be totaled in order to arrive at that price and how much each component represents? A. The mirror at 80 off is \$1.42. The polished edges one-half cent per lineal inch. The holes ten cents each, which gives us a fabrication of 74 cents.

Q. You add 74 cents to the mirror figure? A. \$1.42, and it gives us \$2.16.

Q. Will you multiply by what is the quantity there, five? A. Five.

The Court: How much was all this fabrication you are talking about?

*H. F. Barrett, for Government—Cross.*

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The Witness: 74 cents.

The Court: There were five mirrors, were there not?

The Witness: Yes, sir.

The Court: Down in the corner what does it say for fabrication?

The Witness: Four dollars.

The Court: Five mirrors at 74 cents is \$3.70.

The Witness: They hit the next highest even amount.

The Court: What?

The Witness: They hit the next highest even amount for the analysis, rather than take dollars and cents. They have an even figure.

Mr. Anderson: I can clarify this with an even figure.

The Court: You mean even dollars?

The Witness: Yes.

Mr. Anderson: This is internal analysis for breaking down the operations of the High Point warehouse. They pull out a figure which they must send to Pittsburgh on a report on fabrication. In that report, I gather from the witness, they round off to the nearest dollar figure.

The Court: Sent where?

Mr. Anderson: To their general office in Pittsburgh.

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It is an internal report, analyzing the operations of the warehouse.

I would now like to offer this Defendants' PPG Exhibit No. 21 in evidence.

Mr. Karp: I object, your Honor. This is not based upon any records. It is all based on hearsay. There is no showing as to what the order actually is.



*H. F. Barrett, for Government—Cross.*

There is no showing whether this order is made pursuant to any previous arrangements or understanding, whether it was a continuing order or not. Nor does it show of itself the basis for figures. It is based on pure hearsay.

The Court: The same is true of those other orders, however.

Mr. Karp: That is right.

The Court: Except there were orders given before the price change went into effect.

Mr. Karp: Some of the orders had actual letters.

The Court: I think that goes to the weight, Mr. Karp, and not to its admissibility. I will let it in.

Defendants' (PPG) Exhibit No. 21, last above referred to, admitted in evidence.

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By Mr. Anderson:

Q. I hand you Defendants' Exhibit No. 22, Mr. Barrett, and ask you to look at that and tell me if you can identify the exhibit. A. I can.

Q. Did you have something to do with the preparation of these papers, except for the customer's order? A. No, the only operation I did on that was the pricing after delivery had been made.

Mr. Anderson: Defendants' Exhibit No. 22 consists of a series of pages. The first is a Pittsburgh Plate Glass Company salesman's order, Order No. 317, dated November 10, 1954, an order apparently obtained from Sanford Furniture Corporation of Sanford, North Carolina, for a quantity of plate glass mirrors, and then seven invoices covering shipments pursuant to this order.

I offer this exhibit in evidence.

Mr. Karp: I object, your Honor. It does not show discounts or any correspondence or any background.

*H. F. Barrett, for Government—Cross.*

The Court: Let me see it, please.

(Mr. Anderson handed Defendants' (PPG) Exhibit No. 22 to the Court.)

The Court: You may go ahead.

Defendants' (PPG) Exhibit No. 22, last above referred to, admitted in evidence.

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By Mr. Anderson:

Q. I hand you, Mr. Barrett, Defendants' (PPG) Exhibit No. 23 and ask you if you can identify this exhibit. A. I can.

Mr. Anderson: This exhibit, Defendants' (PPG) Exhibit No. 23, consists of a purchase order of Sanford Furniture Company, dated November 18, 1954, addressed to Pittsburgh Plate Glass Company, High Point, North Carolina, calling for a quantity of mirrors, to which is attached two invoices covering shipments pursuant to this order.

I offer the exhibit in evidence.

Mr. Karp: I don't want to repeat my objections.

The Court: You say you do object and I will let it in.

Defendants' (PPG) Exhibit No. 23, last above referred to, admitted in evidence.

By Mr. Anderson:

Q. With respect to Defendants' Exhibit No. 23, Mr. Barrett, part of the exhibit consists of an order return, No. 11653; is that correct? A. That is correct.

Q. The quantity here shown is 102 mirrors, 12 by 16, beveled three-quarter inch; is that correct?

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A. That is correct.

Q. Can you tell me how you arrived at the price that is shown on there, and I hand you Government's Exhibit

*H. F. Barrett, for Government—Cross.*

No. 61, the PPG list prices, if they will be of any assistance.

A. That is figured at 80 off, with fabrication at 84 cents.

Mr. Karp: Which exhibit are you talking about, please, Mr. Anderson?

Mr. Anderson: We are looking at page 2 of Defendants' Exhibit No. 23.

Mr. Karp: Who is the company—Sanford?

Mr. Anderson: Sanford, yes, sir.

The Witness: I am having difficulty because I don't have my working papers.

By Mr. Anderson:

Q. Haven't you figured these prices before, Mr. Barrett?

A. Yes.

Mr. Karp: I object to the form of the question. He is leading the witness.

Mr. Anderson: I will withdraw the question.

By Mr. Anderson:

Q. Have you figured these prices before? A. Yes, I have.

Q. Have you recently made a summary of all sales to

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furniture manufacturers of plate glass mirrors made by the High Point warehouse during the month of November during 1954? A. Yes, I have.

Q. Does that summary show certain sales at 78 and certain at 80? A. It does.

Mr. Karp: I object, your Honor, referring to a summary on the basis of documents not in evidence. There is no basis of discussing or putting in evidence a summary.

Mr. Anderson: I am trying to save your Honor's time. I have a few more of these invoices. I have

*H. F. Barrett, for Government—Cross.*

established that he has had a summary prepared under his direction and he has knowledge of its contents.

I thought I would try to expedite the time of the Court and jury by getting directly to the summary. I have the documents here that underlie the summary.

Mr. Karp: Your Honor, if Mr. Barrett—

The Court: I just told him that he ought to have the summary here if he is going to question him about it.

By Mr. Anderson:

Q. Do you have the summary? A. Yes, I do.

Q. Would you exhibit it?

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Mr. Karp: My objection is that he doesn't have any basic data upon which any summary is based. There is no way of cross examining him. This is not evidence.

Mr. Anderson: Here is the basic data. I have been introducing the basic data. I have three more of these.

The Court: If you gentlemen would address your arguments to the Court instead of each other, you would get along quicker.

Mr. Karp: I have been trying to do that.

The Court: You may go ahead and question your witness.

By Mr. Anderson:

Q. I take it you prepared a summary; is that correct?

A. I did.

Q. Can you tell me, looking at your summary and looking at Defendants' Exhibit for identification No. 23, what the glass portion of this order was priced at?

*H. F. Barrett, for Government—Cross.*

Mr. Karp: What do you mean?

Mr. Anderson: The plain plate glass mirror portion of the mirrors were priced at.

Mr. Karp: All right.

The Court: Which order are you speaking of, Mr. Anderson?

Mr. Anderson: I am speaking of the order that is

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reflected in Defendants' Exhibit No. 23 to which are attached these two invoices that cover sales pursuant to that order.

The Court: To Sanford Furniture Company.

Mr. Anderson: That is correct, sir.

The Witness: That is figured at 78 percent according to my compiling of the total.

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By Mr. Anderson:

Q. Now, with respect to Defendants' Exhibit in evidence No. 22 covering a sale of a quantity of mirrors to Sanford, what were the plain plate glass mirrors portion of that order priced at? A. 78 per cent.

The Court: Is that the combination of orders where you said you had six or seven?

Mr. Anderson: Yes, sir.

Mr. Harman: If it please the Court, I don't want to interrupt Mr. Anderson, but I believe that exhibit was first marked 23 and it has probably been corrected.

Mr. Humrickhouse: No, there are two of them.

Mr. Anderson: There were two Sanford exhibits. I am referring to 22. I thought I would go back since we have established the presence of this summary.

By Mr. Anderson:

Q. I hand you also Defendants' Exhibits 17, 18—



*H. F. Barrett, for Government—Cross.*

Mr. Karp: May I ask just so I know what I am doing, there is testimony here that page 2 of Exhibit 22 was sold at 78 per cent.

Mr. Anderson: That is correct.

By Mr. Anderson:

Q. Turning now to Defendants' Exhibits Nos. 17, 18

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and 19, all three covering orders of White Furniture Company, from your summary can you tell the Court and jury at what price the plain plate glass mirror portion of the orders—

Mr. Karp: You don't have any copies. I don't know what you are talking about.

Mr. Anderson: I have already given them to you, sir.

Mr. Karp: What exhibits?

Mr. Anderson: 17, 18 and 19.

The Witness: They were figured at a discount of 80 per cent.

Mr. Anderson: It might save the Court's and jury's time if I mark this Exhibit No. 24 for identification.

By Mr. Anderson:

Q. Mr. Barrett, I hand you Defendants' Exhibit (PPG) No. 24 and ask you if you can identify the document. A. Yes. It is totals that I compiled from the exhibit.

Q. Is this the summary that you made of November 1954 orders from High Point warehouse? A. Yes, sir.

Q. Does it reflect the prices covering all shipments made pursuant to orders received by your warehouse on and after November 1, 1954, to the terminal date of that month? A. It does.

*H. F. Barrett, for Government—Cross.*

Mr. Anderson: I offer Defendants' Exhibit (PPG) 24 in evidence.

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Mr. Karp: I object, your Honor.

The Court: What does it purport to show?

Mr. Anderson: It purports to show the November 1954 orders received by the customers listed on the exhibit during the month of November and the discount of each sale as to the plain plate glass mirror portion of the mirrors in question. The totals at the bottom of the page, the total number of sales made at 78 per cent, and the total number of sales made at 80 per cent.

Mr. Karp: Your Honor, I want to call your attention, if I may, that the date 11/2/1954 is the date received. This is a very confusing document. That is what these summaries do. 11/2/54 under date is the date received. That has been shown by a previous document already submitted. What else these dates mean we cannot tell. It is a self serving declaration. It does show that certain manufacturers' companies paid 78 per cent off the list the first time, apparently, they ordered after the November 1 letter they received. Then it has other dates which appear to be orders sent before the November 1, 1954, change was sent to the manufacturers.

The Court: This would be much more accurate and helpful for the purpose for which you introduce it if you eliminate the large item for White, because those

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orders were all given before you sent out your letter of November 1st.

Mr. Anderson: If your Honor please, may I invite your attention to the statement contained in Government Exhibit No. 59, dated November 1, 1954,

*H. F. Barrett, for Government—Cross.*

Pittsburgh Plate Glass Company to White Furniture Company?

The Court: Go ahead.

Mr. Anderson: The last paragraph, "All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance."

The Court: I understand that, Mr. Anderson, but you know very well and I am sure this jury understands that when they got an order sent in before the customer ever got that letter of November 1st, they would slap it back in his face and say "You got a letter from us after you sent this order in that changes the price." If this business was as competitive as you say it is, nobody is going to treat a customer like that.

Mr. Anderson: Your Honor, I don't think it has been established that the customer's purchase order bearing the date October 29 were actually mailed on that date.

The Court: Your letter was dated November 1.

Mr. Anderson: That is correct.

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The Court: Any order you received in your office the next day, November 2—

Mr. Anderson: That is correct, and acknowledged on the fifth.

The Court: And acknowledged on the fifth. So I do not know when you sent out your letter, but if you sent it out promptly on November 1st, it is certain that order that came in to your office on November 2nd was sent, because the witness has said most of the orders were given by salesmen and by them transmitted to the company, were certainly given before they ever got your letter.

Mr. Anderson: Could I put it this way.

*H. F. Barrett, for Government—Cross.*

The Court: As I said, I think your statement would be a fairer representation of what happened if you eliminate the item but you don't have to.

Mr. Anderson: Wouldn't it be fair to say that really goes to the weight of the document?

The Court: That would.

Mr. Karp: Your Honor, having an item in like this is confusing and misleading. That is, putting an exhibit in the record which is known already by previous evidence to have been an order which was made before the date of the November 1 letter. It is obviously misleading and unfair.

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The Court: I have called attention to what I consider the unfairness of the statement. The jury can take that into consideration.

Mr. Anderson: I take it, then, you have received Exhibit No. 24.

Defendants' (PPG) Exhibit No. 24, last above referred to, admitted in evidence.

Mr. Karp: If your Honor please, there is one statement that is disturbing to us and I want the record to be clear.

Mr. Anderson made some remarks about whether or not these letters of November 1 were mailed. I would like him to state for the record clearly whether or not it is his position that none of these letters were mailed to the addresses named in the letters, that is, the furniture manufacturers.

The Court: All the addresses you have represented here, to tell you that they got those letters, so they must have been mailed. You proved yourself all these customers of these defendants got these letters.

Mr. Karp: We have not had these customers here, such as Sanford.

*H. F. Barrett, for Government—Cross.*

**The Court:** You have proved by someone.

**Mr. Karp:** We have had these people identifying

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the letters saying that they were mailed, and it is our understanding counsel admitted that they were mailed. Pittsburgh Plate Glass Company now makes a statement which may imply they were not mailed.

Mr. Barrett was very, very evasive on the point, I will say very strangely, when examined yesterday. He said he had nothing to do with letters addressed to customers. It would be very unfair for this case to rest on a statement by counsel now which is not clear in itself.

**The Court:** Mr. McNeil of Carolina Mirror Company says he sent out a letter under date of October 29, 1954.

**Mr. Karp:** Yes, sir.

**The Court:** Mr. Mayes of Galax said he sent out a letter on the same date, October 2, 1954. Mr. Sessions or whatever his name was of Mount Airy said they sent out a letter dated October 29, 1954. Mr. Beeler of Virginia Mirror Company says they sent out a letter dated October 29, 1954. Mr. Helms, the Treasurer of the Weaver Mirror Company, said they sent out a letter dated October 29, 1954.

Mr. Cuthbert of the Williams Furniture Company says he got a letter from Stroupe dated October 30, 1954. There has been evidence, I think, from Mr. Barrett that there was a letter sent out by Pittsburgh Plate Glass of

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November 1, 1954. There are all seven of your corporate defendants that admitted they sent out these letters, as I understand.

**Mr. Karp:** Yes, your Honor.



*H. F. Barrett, for Government—Cross.*

The Court: Certainly six of them.

Mr. Karp: My understanding was from Mr. Barrett that Mr. Hancock wrote that letter. I am not sure whether he stated clearly that the letter was mailed. Mr. Anderson has made references which I have understood to imply or perhaps imply that the November 1st letter was not mailed.

Mr. Anderson: I have not made such a statement.

The Court: He has implied that several times, but there is no basis for it that I know of.

Mr. Karp: I would like to know what proof we have to meet and we will be glad to meet such proof as is necessary. If we have to make an investigation now we shall make it. We have a little time.

Mr. Anderson: If your Honor please, I meant no implication whatsoever. Yesterday when those letters were introduced, I stipulated to their authenticity. I don't know what the dispute is.

The Court: Several times this morning you said there was some question whether those letters were mailed or not. You made that statement a couple of times this

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morning. I have not seen any question that they were mailed. I am reasonably certain that if the representatives of these corporations had not mailed them, they would have said so.

Mr. Anderson: Very well, your Honor.

May I proceed, your Honor?

The Court: How much more of this do you have?

Mr. Anderson: If I read this summary—

Mr. Karp: I would like the record to be clear. The statement of Mr. Anderson was not clear one way or the other whether the letter was mailed. I want to be fair to Mr. Anderson.

The Court: Mr. Anderson probably doesn't know.

*H. F. Barrett, for Government—Cross.*

Mr. Anderson: I don't know, your Honor, and I have tried to refrain from saying that.

Mr. Karp: Thank you, sir.

Mr. Anderson: Reading from Defendants' Exhibit No. 2: sales of November 1954 orders at 78 percent, \$12,769.49. Sales of 1954 orders at 80 percent, \$12,697.51.

No further questions.

The Court: I suppose you wish to re-examine this witness?

Mr. Karp: Yes, I would like to cross examine him somewhat on a new matter.

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The Court: Counsel, you may proceed.

Mr. Anderson: If your Honor please, so there may be no question about our position regarding these November 1, 1954 PPG price announcement letters, we do not deny that the letters were received by the addressees. We do not know whether they were mailed or delivered in person. I just wanted to be sure that Mr. Karp understood that.

Mr. Karp: Yes. I took the trouble of calling Mr. Anderson at lunch time from his dining room and asked him for the original letters which we had stipulated need not be introduced this morning. In view of Mr. Anderson's evasiveness about whether they were mailed or not. Now that there may be no question about this, I would like to offer in evidence—pardon me—I would like to mark for identification each of these carbon copies of letters now handed to me.

Is Mr. Barrett here?

Mr. Anderson: Call him.

Mr. Humrickhouse: We don't know.

*H. F. Barrett, for Government—Cross.*

Mr. Karp: Mr. Barrett was to be here for cross examination.

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Mr. Anderson: I assume he is here.

Mr. Rogers: He was in the Marshal's private office a moment ago.

While Mrs. Bible is marking these documents for identification, could the reporter please read back the statement by Mr. Anderson concerning these letters.

(The record was read by the reporter.)

Mr. Karp: I have marked for identification what appears to be carbon copies of letters dated November 1, 1954, as Government's Exhibit No. 66, 67, 68, 69, and 70. The addressees of such letters, as appears on the documents, are B. F. Huntley Furniture Company, Exhibit No. 66; Mullins Lumber Company, Exhibit No. 67; Sand Hill Furniture Company, Exhibit 68; Sanford Furniture Company, Exhibit No. 69, and White Furniture Company, Exhibit No. 70.

Mr. Gilmer: Have you got copies of those? What are they?

Mr. Karp: We have no copies. We just received these from Pittsburgh Plate Glass Company.

Mr. Gilmer: Are they the same as those others you introduced?

Mr. Karp: They are the same as the photostats which were introduced.

Mr. Gilmer: If your Honor please, just in the

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interest of saving time and confusion, as well as an unnecessary record, if I understand the situation correctly, on yesterday photostats of these very

same things were introduced in evidence, and it was stipulated that they were photostats of the originals. I cannot see what possible good introducing these could be except to take up time.

The Court: Are they originals of something already introduced?

Mr. Karp: They are the originals. I had the reporter read back Mr. Anderson's statement. He says they are the originals, but he cannot say whether they were mailed or delivered. Apparently there is a question of time involved here that Pittsburgh Plate Glass Company is raising, and I want to make sure just what the situation is for the record. So I asked for these originals and wish to question the witness as to when they were mailed, if he knows, or whether they were delivered, if he knows, and when.

Mr. Gilmer: Your Honor, the photostats he introduced in evidence yesterday that form four exhibit numbers are the same things, and he could use the photostats as well as these papers.

The Court: Yes. He has those in his hand and he can question from those. I do not want any duplicates

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in the record.

Mr. Gilmer: He has marked them for identification.

The Court: I can exclude them from evidence, can I not?

Mr. Gilmer: That is my only point.

Mr. Karp: Perhaps you can exclude the photostats. These originals are important, as you will see.

The Court: Go ahead.

*H. F. Barrett, for Government—Re-direct.*

H. F. BARRETT, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

*Re-direct examination by Mr. Karp:*

Q. I show you, Mr. Barrett, Exhibit 66, 67, 68, 69, and 70, and ask you what they purport to be? A. Copies of letters written to the furniture customers.

Q. Are they carbon copies of letters? A. Apparently, yes.

Q. Do they come from the files of your company? A. I would imagine so.

Q. Do you know? A. No, I do not.

Mr. Anderson: I will stipulate that they do.

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*By Mr. Karp:*

Q. Is it the custom and practice of the High Point warehouse that letters, that when letters are mailed to other persons, carbon copies are kept on file at the High Point warehouse? A. That is the general practice.

Q. Would you say, sir, that these documents which you say are carbon copies would have been mailed to the furniture manufacturers? A. That I can't say, Mr. Karp. I don't know.

Q. Is it customary to keep carbon copies of letters mailed? A. Oh, yes.

Q. When a letter is not mailed, is a carbon copy kept in the absence of the original? A. Oh, yes. Definitely.

Q. Do you have the originals here? A. No, sir.

Q. You do not? A. I don't.

Q. Do you know whether these originals are in your office? A. No, I don't.

Q. Did you produce the originals? A. I did not.



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Q. Do you know whether the subpoena directed to Pittsburgh Plate Glass Company directed the production of the originals of the photostats? A. No, I do not.

Mr. Karp: I would like to ask Mr. Anderson who made the search to comply with the subpoena *duces tecum* served by the Government upon it?

Mr. Anderson: I will be pleased to answer. As I recall, there were five attorneys who spent a considerable period at High Point, North Carolina, and diligently attempted to produce every document called for by the subpoena.

Mr. Karp: Were the original documents which would ordinarily be mailed to the customer among those documents?

Mr. Anderson: If we had found the originals, I assume if the subpoena called for them we would have produced them.

Mr. Karp: Is it only the lawyers who made the search?

Mr. Anderson: That is exactly what I said, sir.

Mr. Karp: Who were the lawyers' names, please?

Mr. Anderson: I believe the lawyers that were at High Point were Mr. Richard K. Decker, Mr. Lewis F. Schauer, Mr. Thomas Healey.

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Mr. Karp: Will you please give their addresses as you name them?

Mr. Anderson: All three of Chicago, Illinois. Mr. Richard C. Packard, my associate in Pittsburgh, and I. That is my best recollection of those who were there.

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Mr. Karp: I hope, your Honor, that this small fact of the mailing of the letters will not require put-

*H. F. Barrett, for Government—Re-direct.*

ting counsel on the stand—any of the counsel he mentioned. I would not like to do that. But it appears from the statements made and the testimony made that when a letter is sent to another party, a carbon is kept in the file. It was also stated by Mr. Anderson that there were no originals in the files of these letters, but carbon copies. These letters that were addressed to the customers.

By Mr. Karp:

Q. I now want to ask the witness whether under those circumstances it would be in the nature of the course of business of the Pittsburgh Plate Glass Company and its High Point warehouse that the originals would have been sent to the addresses of these letters by mail. A. Not necessarily, for this reason: It has been Mr. Hancock's practice to contact those accounts that he calls on whenever a change is made in his regular routine.

Q. Are you now saying that sometimes Mr. Hancock delivers letters to his furniture manufacturers by hand?

A. That is true.

Q. Where is your High Point warehouse located? A. 1 South Hamilton Street.

Q. Which town?

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A. High Point, North Carolina.

Q. How far is High Point, North Carolina, from Mullen, South Carolina? A. I can't answer that, because I have never been there.

Q. About how many miles would you say?

The Court: Mr. Karp, what is it you are getting at?

Mr. Karp: I am getting at this, your Honor. These letters were sent to the trade in one form or another.

*H. F. Barrett, for Government—Re-direct.*

The Court: All right, sir.

Mr. Karp: They would have been sent at the time of the date. Ordinarily letters are sent out, or soon thereafter.

The Court: The later they were sent out to the trade, the better it is from your standpoint for the present question involved. If they were not mailed on the 1st of November, and they waited until the 2nd or 3rd to mail them, that is so much better from your standpoint because you are questioning orders which were received on November 2nd.

Mr. Karp: Yes, but we also want to show that these letters—that the price was agreed upon—and one of the circumstances is the dates of these letters.

The Court: The letters are dated and Mr.

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Anderson has conceded that they were sent to the trade either by mail, or by personal delivery, he doesn't know which.

Mr. Karp: Let me ask this one question, if I may.

By Mr. Karp:

Q. It is not your testimony, is it, that Mr. Hancock personally delivered this letter from High Point, North Carolina, to Mullens, South Carolina, just to deliver it?

A. Whenever a change is made in discounts, he would take it and discuss the situation with the customer and get his reaction.

Q. He would do that by phone, would he? A. No.

Q. He would take a special trip to Mullens, South Carolina? A. Regularly, yes.

Q. That is your testimony? A. That is my testimony.

Q. Would the date on this letter indicate when it was written? A. I would think so.

*H. F. Barrett, for Government—Re-direct.*

Q. When do you say these letters were written? A. I can't answer that because I don't know.

Q. You say November 1, 1954, indicates the date it was written?

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A. It indicates it, but I don't know when it was written.

Mr. Karp: If your Honor please, I have these photostatic copies marked for identification. It is clear what my purpose was. I want to be sure that there is no question about these very important documents. However, I intended to offer them and let them stay in the record in addition to the photostats. I can see no harm, but as your Honor wishes.

The Court: I don't see any reason for having duplicates of documents in the record. It makes a big record, gentlemen.

Mr. Gilmer: I object, your Honor. I object to Mr. Karp continually stating before this jury his interpretation of evidence simply when he is trying to get introduced a document. He has done that on a number of occasions and for the record of Carolina, we want to object to introducing documents by arguing the question with the Court at the time.

Mr. Karp: I am merely stating the reason for my proffer.

The Court: I did not understand him to interpret any evidence. Here are certain documents dated November 1.

Mr. Gilmer: Yes, sir.

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The Court: In the absence of any testimony that they were prepared on a different date the jury will certainly assume and I will assume and you assume and everybody will assume that is the date they were prepared.



*H. F. Barrett, for Government—Re-direct.*

Mr. Gilmer: Yes, sir. My only point is Mr. Karp offering that suggestion.

Mr. Karp: I merely state the purpose of my proffer.

The Court: I see no reason for putting in original documents and photostats, which are photographs of the same documents.

Mr. Gilmer: That was my objection.

Mr. Karp: Can these documents be placed in lieu of the photostats and they be given the numbers of the photostats? Can the reporter do that?

The Court: I have no objection to that.

Mr. Humrickhouse: 56, 57, 58, 59 and 60.

Mr. Karp: Six of them.

Mr. Humrickhouse: No, five.

Mr. Karp: What were the numbers?

Mr. Humrickhouse: 56, 57, 58, 59 and 60.

Mr. Karp: Suppose I call them original carbon copies of letters be substituted for the documents marked from 56 through 60. It will be merely a question

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of substituting these for the photostats and giving them the numbers which are now on the photostats and excluding the photostats.

By Mr. Karp:

Q. Mr. Barrett, I want to show you Defendants' (PPG) Exhibit 24, which you identified previously, and which was offered in evidence this morning. A. Yes.

Q. I call your attention to this exhibit and ask you whether this is not purported to be a list of orders from November 2, 1954, to November 30, 1954? A. I didn't get the question.

(The reporter read the question.)



By Mr. Karp:

Q. Orders for plain plate glass mirrors or for plate glass mirrors. A. Plate glass mirrors.

Q. You show, do you, on this list that with the exception of the date of November 2, 1954, the first item, and with the exception of the orders purported to be from Huntley Furniture Company—Manufacturing Company—each one of these orders show that after November 1, 1954, plain mirrors—plain plate glass mirrors—were sold to the furniture manufacturers trade at 78 per cent off the 1950 list? A. That is correct.

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Q. I believe you testified that with respect to the November 2, 1954 order to White Furniture Manufacturing customer, the order was dated October 29, 1954; is that correct? A. I think so, yes.

Q. So there remains a question of clearing up the orders from Huntley Furniture Manufacturing Company, is that correct? A. I would think so.

Q. Is it sometimes the occasion that mirrors are broken? A. Oh, yes.

Q. Or mirrors are damaged? A. Yes.

Q. Or that mirrors might be manufactured defectively? A. That is right.

Q. In those circumstances, would Pittsburgh Plate Glass Company honor a new order to take care of the defects? A. Certainly.

Q. Or a broken mirror in the course of transportation? A. Yes.

Q. And in those circumstances, would a new order number—a new order bearing a new order number—be transmitted by the customer for substituted mirrors? A. No, sir.

Q. Would it be possible for a customer to issue a new

order and make some notation on it to show that it pertained to a back order? A. No, I wouldn't think so.

Q. You wouldn't think that is possible? A. No.

Q. Would a customer go back and get the original order and then send it in again, or would it make up a new order?

A. As a rule, where a defective mirror is involved, they would write a letter.

Q. Or phone you? A. Or phone us.

Q. Sometimes they would send in an order with a notation that there was a phone on it or that it pertained to a back order. A. They might mark it "confirming order."

Q. Could they mark "back order"? A. No, sir.

Q. You have never seen it done? A. No, sir.

Q. What is the significance of a number on an order?

A. That is a system that we have—you mean our shop ticket?

Q. No, I mean the customer's order. A. Well, I don't know.

Q. An order number is a number on an order made out by a customer, is that not right? A. That is right.

Q. It would be a piece of paper sent to you by the customer, is that correct? A. That is correct.

Q. That piece of paper would come usually from a book with perforated paper and the order torn off and sent in? A. I can't answer that.

Q. You don't know that? A. No. It may be looseleaf; it may be bound, and so on.

Q. But the order numbers would bear consecutive numbers? A. Not necessarily, no.

Q. Would they go back? A. They may send us an order for some mirrors and later on or a later date send us another order.

Q. Yes. I don't mean that each order would follow the next number. I mean the order book of the customer would have consecutive numbers. I mean the blank forms. A. No. When an order is received, we make up our shop ticket.

Q. I am not talking about that, Mr. Barrett. I am asking you whether— A. I don't follow you.

Q. All right. A customer has a purchasing agent,

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usually, does he not? A. Most of them, yes.

Q. And they have order books. A. I would think so.

Q. And the order books contain order tickets in them or order forms. A. I would think so.

Q. And sometimes they would have the name of the customer on it. A. Always.

Q. And the date? A. That is right.

Q. So that the order number is the number of the document or of the form of the customer? A. I would think so.

Q. And the date would be dated by the customer? A. I would think so.

Q. In submitting this Exhibit No. 24—Defendants' Exhibit No. 24—did you present an order covering the date November 29, 1954, or an order covering the date November 30, 1954, for Huntley Company? A. Yes.

Q. Where are they?

Mr. Anderson: Right here. If your Honor please, I did not introduce the documents that I have just handed

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to Mr. Karp because I was trying to save time. I am very glad he raised the question because when he concludes examination, I would like to ask leave of the Court to have them introduced at that time.

Mr. Karp: All right. We have documents here to refresh.

By Mr. Karp:

Q. I show you this piece of paper for the purpose of refreshing your recollection, and I ask you whether—

*H. F. Barrett, for Government—Re-direct.*

Mr. Anderson: May I see that, please?

(The document was handed to Mr. Anderson.)

By Mr. Karp:

Q. Whether this would indicate that B. F. Huntley Furniture Company sent to you its order dated November 29, 1954, and that it pertained to a previous back order?

A. No.

Q. Do you see the words "Back Order" on it? A. The original order was made out by us on our shop ticket. Part of the order was delivered. The undelivered portion is entered on a new shop ticket and marked "Back Order."

Q. What does "Back Order" pertain to? A. It means we lack these seven mirrors completing the original order.

Q. So there was an order previous to November 29, 1954? A. I would think so.

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Q. So that November 29, 1954, would not represent the actual date of the order of these mirrors? A. Let me see those, if you will.

(The document was handed to the witness.)

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A. No. There are 29 mirrors back-ordered on the original order, 7 were delivered against the order of that date. I could not see it before. You see 29 mirrors back-ordered.

Q. Back-ordered from what? A. From the original.

Q. From the original order? A. That is right.

The Court: Is there any way of telling when the original order was given?

The Witness: The date of that invoice, November 29.

*H. F. Barrett, for Government—Re-direct.*

By Mr. Karp:

Q. That is the date it was invoiced. A. That is the date of the order.

The Court: The date you filled the order. Is there any way of telling when the order was sent to your company?

The Witness: No, unless Mr. Anderson has a record of that. I can't say offhand. I don't know.

By Mr. Karp:

Q. You recall now that the seven mirrors called for an amount of \$62.72. A. That is right.

Q. That is for seven mirrors, \$62.72. That was one

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invoice towards this back order, is that correct? A. No, that is not correct.

Q. Is that \$62.72? A. Yes.

Q. Is that for seven mirrors? A. Yes.

Q. And those seven mirrors are to be charged to the back-order, is that correct? A. No. There is an error in that invoice. I see it. Because 29 mirrors were back-ordered and 7 mirrors were delivered against the original order.

Q. Yes. That is right. 29 mirrors were back-ordered. Would that November 30, 1954 item be part of that transaction? A. I would think so, yes.

Q. So that the November 29, 1954 item and the November 30, 1954, item is part of one transaction pertaining to a back order? A. No, to the original order.

Q. To the original order. A. Yes.

The Court: Mr. Barrett, what do you mean by a back order?

The Witness: When we receive an order, sir, for 100 mirrors and deliver 50 against that hundred, we make out a back order. We have a system of shop tickets



*H. F. Barrett, for Government—Re-cross.*

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or order returns that go out to the warehouse for the superintendent and line them up to make delivery. When he makes a partial delivery and the original return comes in to the warehouse or into the office, we invoice the part that has been delivered and back-order the undelivered portion.

The Court: That is just referring it back to the original order?

The Witness: That is right.

Mr. Karp: That is all.

Mr. Anderson: If your Honor please, may I have an opportunity to clear up a little confusion?

The Court: Yes, sir.

Mr. Anderson: Thank you, sir.

*Re-cross examination by Mr. Anderson:*

(For Pittsburgh Plate Glass Company and W. A. Gordon:)

Q. I show you Defendants' (PPG) Exhibit No. 25, and ask you to look at it, Mr. Barrett. After you have had an opportunity to look at it, tell me if you can identify it. A. Yes, I can.

The Court: Is this something new, Mr. Anderson?

Mr. Anderson: This is a document, part of which I hand to Mr. Karp, and I believe if I am correct, he showed it to refresh Mr. Barrett's recollection.

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Mr. Karp: No, I am sorry. Was that the document I showed you?

The Witness: No.

Mr. Karp: I showed him an entirely different document.

*H. F. Barrett, for Government—Re-cross.*

Mr. Anderson: I withdraw the statement, sir. I do offer it in evidence for the purpose of substantiating the entry that was on Defendants' Exhibit No. 24, showing an order received from B. F. Huntley Furniture Company dated November 29, 1954. It supports the entry in the tabulation which was Defendants' Exhibit 24.

The Court: Is there some dispute about it?

Mr. Anderson: If I understood Government counsel's questioning of this witness, it seems there was some dispute.

The Court: All right.

Mr. Anderson: I offer it in evidence.

(Defendants' (PPG) Exhibit No. 25, last above referred to, admitted in evidence.)

By Mr. Anderson:

Q. Mr. Barrett, does this Exhibit 25 show that an order from B. F. Huntley Furniture Company for a quantity of 36 mirrors, 30 by 44, was received dated November 29, 1954?

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A. Yes, sir.

Q. Does the invoice No. 12070 attached to this order cover the shipment of a quantity of those 36 mirrors? A. It covers 7.

Q. It covers 7. When you were explaining to his Honor what the phrase "back order" meant, can you tell the Court and jury how many mirrors, pursuant to that November 29 order, were at that time back ordered? A. 29.

Q. So that there remained to be delivered 29 mirrors, is that correct? A. That is correct.

Q. I call your attention to the second invoice attached to this, No. 12154, and ask you the quantity of mirrors shown on that invoice. A. 29 mirrors, 30 by 44.

Q. And that invoice is directed to B. F. Huntley Furniture Company? A. Yes.

*H. F. Barrett, for Government—Re-cross.*

The Court: When was that filed?

The Witness: The back order was delivered on December 1st.

The Court: December 1st?

The Witness: December 1st, 1954.

The Court: It is included in your tabulation for

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November, is it not?

Mr. Anderson: The tabulation purports to show, if your Honor please, sales of orders that were accepted during the period of November 1 to November 30. The shipments pursuant to those orders may have gone on for months after that, but they were pursuant to the orders of November.

This is the last exhibit I have, if your Honor please.

By Mr. Anderson:

Q. I hand you Defendants' (PPG) Exhibit No. 26, marked for identification, and ask you if you can identify it, Mr. Barrett? A. Yes, I can.

Mr. Anderson: I offer Defendants' Exhibit 26 in evidence. It consists of a B. F. Huntley order, No. 505 dated November 30, 1954, addressed to Pittsburgh Plate Glass Company, High Point, North Carolina, calling for a quantity of 470 mirrors, attached to which is a handwritten memorandum on the stationery bearing the caption memo from L. H. Hancock, and further attached are three invoices covering shipments pursuant to this November 30 order. I offer it in evidence.

May I inquire if your Honor will receive it?

The Court: Yes, sir.

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(Defendants' (PPG) Exhibit No. 26 last above referred to, admitted in evidence.)

By Mr. Anderson:

Q. Mr. Barrett, directing your attention to the order from B. F. Huntley, is there a reference—do you follow here—to a discount in the handwriting of probably someone connected with the Huntley account? A. Yes, there is.

Q. What does it say? A. List less 80 per cent.

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Q. Now, I would like to hand you a tablet and I want you to add up the total dollar figures of these three invoices, if you will, sir.

What, if anything, do you arrive at there? A. \$4,389.80.

Q. I hand you now again Defendants' Exhibit No. 24 and direct your attention to the last item shown on that memorandum, and ask you if Defendants' Exhibit No. 24 contains this entry under the column date 11/30/1954. Under the column discount 80 percent. Under the column customer, Huntley. Under the column amount, \$4,389.80. Is that correct? A. That is correct.

Mr. Anderson: No further questions, your Honor.

The Court: Mr. Barrett, in that tabulation you have for November, there are either four or five names on there to whom you shipped or from whom you had gotten orders: Huntley, White, Sanford, Jordan, and maybe one other.

Does that represent all the people you received orders from in November 1954?

The Witness: I can't answer that, your Honor. I don't know.

The Court: Who made up the tabulation?

*H. F. Barrett, for Government—Re-cross.*

The Witness: I made the tabulation. I see what you mean. Yes, I made it up from the original orders

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received during that month.

The Court: Were those the only orders received during that month, from those five customers only?

The Witness: It could be; yes, sir.

The Court: I didn't ask you if it could be. I asked you if it was.

The Witness: Yes.

The Court: Why did you charge some of them one discount and some the other?

The Witness: Competition controlled that, sir.

The Court: Why would competition control it?

The Witness: Because they quoted some of the accounts a lower discount than was prevailing at that time.

The Court: But you were quoting the different discounts to different customers, not at different times.

The Witness: That is right.

The Court: Why were you treating your customers differently? That is what I am asking.

The Witness: It is to meet competition or prices quoted to that particular customer during that month.

The Court: How do you know what prices were quoted to the customer during that month by competitors?

The Witness: Sometimes we have to take our customer's word for it. Sometimes they show it.

The Court: How did you know it in this case?

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The Witness: Because it was invoiced on that basis.



*H. F. Barrett, for Government—Re-direct.*

The Court: Of course it was, but the invoice was sent out by you. The customer doesn't make up the invoice. When you got the order for so many mirrors from Huntley or whoever it was, why did you charge him at a rate that was figured at 80 percent discount and probably the next day or the same day when you got an order from Sanford, why did you charge him at 78 percent?

The Witness: Your Honor, I don't handle the discount end of the Mirror Department. When these orders came in, I would naturally assume that was the discount agreed upon and the order accepted.

The Court: All right, sir.

*Re-direct examination by Mr. Karp:*

Q. That invoice you talked about for Huntley, that order was put in by phone, wasn't it? A. Yes, I think so.

Mr. Anderson: Which order are you referring to, Mr. Karp?

The Witness: Thirty-nine mirrors. Thirty-six mirrors, rather.

By Mr. Karp:

Q. I am talking about an order for 29 mirrors. A. Thirty-six mirrors.

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Q. On that November 30, 1954 order, wasn't there in part an order for 29 mirrors? A. No. It was for 36, the original order.

Q. Wasn't there one for 29? A. No. Seven were delivered and 29 back ordered.

Q. Was that done by phone, do you know? A. I think so. I saw "Phone" on that invoice, which would indicate that.

*H. F. Barrett, for Government—Re-direct.*

Q. You say when there are special occasions for an order, it is usually done by phone? A. Not in every case, no.

Q. In some cases? A. In some cases.

Q. This might have been such a case? A. Yes. If it is marked on that, that is the copy of the original shop ticket. I might explain that. We make out our invoice at the same time we make our shop ticket or order return.

Q. Yes. This thing I show you is the shop ticket. A. No. That is the invoice.

Q. Suppose it says "Phone" on the invoice. What would that indicate? A. It would indicate it was received by phone.

Q. So you don't know just what the circumstances were concerning this order, in view of the phone reference; is

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that correct? A. The only thing I can say is that it was phoned in and entered and delivered.

Q. Did you participate in the phone call? A. No.

Q. Do you know what was said in the phone call? A. I do not.

Q. Do you know whether Huntley said "Give me a special discount in this case because I have got orders on file for my customers buying my furniture suites and you raised the price on me while I had that order in"? A. I can't answer that. I don't know.

Q. Could that have happened?

Mr. Anderson: He said he didn't know.

Mr. Karp: I asked him if it could have happened.

The Witness: I still say I don't know.

By Mr. Karp:

Q. Could it have happened? A. Maybe.

Mr. Anderson: Objection, your Honor. He said he didn't know.

*H. F. Barrett, for Government—Re-direct.*

By Mr. Karp:

Q. In the regular course of business does that happen at times? A. I wouldn't think so, no.

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Q. You wouldn't think so? A. No.

Q. If there were a breakage, would there be a phone call made? A. Possibly.

Q. Could that have happened here? A. No, because they are delivered by our own truck. If any breakage occurred our driver would report it to the warehouse superintendent.

Q. Did you know whether there was any such report made in this case? A. No.

Q. All right. Do you know whether Mr. Hancock engaged in a telephone conversation with anybody at Huntley concerning this order? A. I can't answer that. I don't know.

Q. But looking at that document I showed you, you would think there was a phone conversation, would you not? A. No. That would be the call from the customer to us?

Q. Yes. That would have been a phone conversation with someone. A. I would think so, but not necessarily—

Q. It would not have been with you? A. It could have been.

Q. Do you recall this transaction?

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A. I don't. It could have been with anyone in the organization.

Q. You don't recall this transaction? A. No, sir.

Mr. Karp: That is all.

Mr. Anderson: May the witness be excused, your Honor?

The Court: There is one thing I did want to ask you that I still don't understand. One of the orders

*H. F. Barrett, for Government—Re-direct.*

you were questioned about is an order for five mirrors, and there was some fabrication to be done which amounted, you said, to 74 cents for each mirror.

The Witness: That is correct.

The Court: With the list price of each mirror with the fabrication adding up to \$2.16 each?

The Witness: That is correct.

The Court: But on that invoice there is a notation that \$4 is charged for the fabrication. But you didn't charge the customer that \$4. You charged him the \$3.70.

The Witness: As Mr. Anderson may have explained to you—

The Court: I don't want Mr. Anderson's explanation. I want yours.

The Witness: We have to pick up what we term fabrication, which includes edge work, glazing, labor,

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and make a report to Pittsburgh at the end of every month as to the total amount of fabrication at the High Point warehouse.

The Court: Yes, sir.

The Witness: And in picking up those amounts we don't pick up any fractions or dollars and cents. We go to the next nearest dollar mark.

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The Court: Why?

The Witness: Because it is easy for the accountant to pick it up.

The Court: Do you put that on the invoice you send to the customer?

The Witness: No, sir. That is not shown at all. That is for the office.

The Court: What paper was that four dollars, the order form?

*H. F. Barrett, for Government—Re-direct.*

The Witness: On the shop ticket, that is right. On our order return from which our analysis is made.

The Court: Was it the order form that the four dollars was marked on?

Mr. Anderson: It is on what we call the order return, and the order return is a document that contains all the information of substance that is on the invoice. The invoice goes to the customer.

The Court: I understand that.

Mr. Anderson: On the company's copy of this invoice information, on the order return they stamp for this wholly internal use to fill out this form for Pittsburgh this rounded off dollar figure for edge-work.

The Court: Is that just a bookkeeping matter so that four dollars can be charged to that particular

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matter?

Mr. Anderson: It is for an accounting purpose, to make an internal analysis of fabrication expense and the charges that are internally allocated to it within the Pittsburgh Plate organization. It is a rough approximation.

The Court: I see.

Mr. Anderson: I am sorry that was not made clear.

The Court: I thought it was something that was returned to the customer.

Mr. Anderson: No.

The Court: I can see that the \$10.80 did not correspond to that.

Mr. Anderson: That is correct, sir.

The Court: That is all, Mr. Barrett.

Witness excused.

Mr. Karp: We have a formal document to introduce before the next witness is called.



*H. F. Barrett, for Government—Re-direct.*

Mr. Carlson: Your Honor, first I want to state that we had a summary of the list price books prepared prior to this trial, and we are willing to present it at this time. But in view of counsels' remarks regarding the price books, if they wish to stipulate at this time that the seven list price books which are in evidence are identical with respect to all of

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the sizes and prices shown therein, we will go on to the next witness.

Mr. Anderson: I suppose I am called upon to respond, your Honor. As I said yesterday, I would be very happy to stipulate that the information, when you get to the part of the book that relates to sizes, and the list prices, is substantially identical. Let me explain why I said substantially. It would be untrue for me to say that the books inside were actually identical because the column headings use different words. That is one of the reasons I said substantially.

The dollar figures, as far as I know, with the exception of one or two typographical errors, are the same. I make no big point about it.

Finally, your Honor, the Pittsburgh Plate Glass Company list was printed, as this document shows, by the A. L. Garber Company of Ashland, Ohio, and I believe the list that was introduced of the other companies bearing the April 1, 1950, date was printed by a different concern.

If that explanation is satisfactory to the Government, I am prepared to stipulate what I have just stated.

Mr. Carlson: I will have to confer with my associate, your Honor. Is it all right?

*Ralph G. Buchan, for Government—Direct.*

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The Court: It is conceded that in all of these books, the list price quoted is the same for mirrors of the same size?

Mr. Anderson: Certainly, your Honor.

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RALPH G. BUCHAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. Will you state your name and address for the record, please? A. Ralph G. Buchan, North Wilkesboro, North Carolina.

Q. By whom are you employed, sir? A. By the Carolina Mirror Corporation.

Q. What is your position? A. I am the sales manager for the industrial mirror division.

Q. What is the industrial mirror division? A. It includes sales to the furniture manufacturers, glass jobbers, medicine cabinet manufacturers.

Q. That includes sales of plate glass mirrors, including plain plate glass mirrors? A. Yes, sir.

Q. Which is your predominant class of trade in that department?

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A. Sales to the furniture manufacturers.

Q. What percentage of your sales from that department is accounted for by the furniture manufacturers, if you can say? A. I cannot give you the exact amount, sir.

Q. The approximate amount? A. I would say the majority.

Q. You would say the very, very great majority? A. In the neighborhood of 66 $\frac{2}{3}$  per cent perhaps.

*Ralph G. Buchan, for Government—Direct.*

Q. In fact, it could be more than that? A. I can't say, sir.

Q. Are you in the nature of a supervisor of sales to furniture manufacturers? A. Yes, sir.

Q. You supervise the sales made to that class of trade? A. Yes.

Q. Will you give for the Court and jury, please, the name of your superior? A. Mr. Edd F. Gardner.

Q. Is he president of the company? A. Yes, he is.

Q. Is he a defendant in this case? A. Yes, sir.

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Q. I show you Government's Exhibit 64 and ask you whether that refreshes your recollection, this being the program of the Mirror Manufacturers Association meeting in October, 1954? A. What was the question, sir?

Q. I want to know whether you specifically and clearly remember the date you went to the Asheville meeting? A. Yes, sir, I do remember that.

Q. What was that day? A. Tuesday, October 26.

Q. October 26? A. Yes, sir.

The Court: The meeting was already in session

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at that time?

The Witness: That is correct, your Honor.

The Court: It had started?

The Witness: Yes, sir.

By Mr. Karp:

Q. This meeting had begun on October 24, on Sunday, had it not? A. I don't know, sir.

Q. Let me show you this program and ask you to refresh your recollection? A. That is what the program says, yes, sir.

*Ralph G. Buchan, for Government—Direct.*

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Q. Did you receive any instructions from Mr. Gardner?

A. Yes, sir, I did.

Q. What were those instructions? A. My instructions were to attend the meeting in Asheville. I was to go Tuesday morning. The main purpose of my going to the meeting was to contact the plate glass

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manufacturers that were going to be there and sound them out on the supply of plate glass.

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Q. How long did you stay at Asheville? A. To the best of my recollection, I left Thursday morning.

Q. That would be what date? A. That is the 28th of October, if I remember correctly.

Q. Did you talk with Robert Stroupe when you were there? A. Yes, sir.

Q. Did you talk with Kenneth Hearn, Vice President of the Virginia Mirror Company? A. Yes, sir.

Q. Did you talk to J. A. Messer, Sr., of Galax and Mount Airy? A. Yes, sir.

Q. Did you talk to J. A. Messer, Jr.? A. Yes, sir.

Q. Did you talk to Mr. R. E. Weaver? A. I do not recall talking to Mr. Weaver.

Q. You don't? Think a moment about that. Did you talk to Mr. Weaver? A. I said I did not recall.

Q. Do you recall testifying before a Grand Jury? A. Yes, sir, I do.

Q. In connection with this matter? A. Yes, sir.

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Q. Do you recall whether or not you testified concerning any discussions with Mr. Weaver? A. I do not recall that, no, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. Do you recall whether you testified concerning having breakfast or any other meeting with Mr. Weaver? A. I don't recall that; no, sir.

Q. You don't recall that? A. No, sir.

Q. Would you say you did not talk with Mr. Weaver? A. No, sir, I would not.

Q. Now you remember you talked with Robert Stroupe and Kenneth Hearn and J. A. Messer, Sr., and J. A. Messer, Jr. You remember that clearly. You have some doubts whether you talked to Mr. Weaver. Will you think about that again, please? A. I don't know whether I talked to him and I don't know if I didn't talk to him.

Q. Did you talk to Mr. W. A. Gordon? A. Yes, sir.

Q. Who is he? A. He is connected with the Pittsburgh Plate Glass Company, sir.

Q. Do you know Mr. Gordon very well? A. At that time I did not know him very well.

Q. You introduced yourself? A. I knew who he was, sir.

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Q. Did you tell him Mr. Gardner sent you down? A. Yes, sir.

Q. Did you talk to Mr. Paul Ketchum of the Pittsburgh Plate Glass Company? A. Yes, sir.

Q. Who is he? A. I think he was connected with glass sales. His exact title I do not recall.

Q. Is he Mr. Gordon's assistant? A. It is a possibility. I don't know, sir.

Q. Were there any discussions between you and these other mirror manufacturers concerning prices for plain plate glass mirrors? A. I am sure there was some discussion of prices, yes, sir.

Q. Was there discussion as to expressions by anybody as to the need to raise prices for plain plate glass mirrors? A. I think so, yes, sir.

Q. Was there any talk about the desirability that prices be raised? A. I think so.



*Ralph G. Buchan, for Government—Direct.*

Q. Who said that? A. I do not recall.

Q. Do you recall all of them talking about it from time to time?

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A. I wouldn't say all, no. I don't recall.

Q. Do you recall talking about that to Mr. Robert Stroupe? A. I think so, yes, sir.

Q. To Kenneth Hearn? A. I think so.

Q. To J. A. Messer, Sr.? A. I think so.

Q. To J. A. Messer, Jr.? A. I think so.

Q. To R. E. Weaver? A. I don't recall.

Q. To W. A. Gordon? A. Yes, sir, I have a faint recollection of that. I wouldn't say positively that I did, no.

Q. You do have a recollection? A. Yes, sir. I won't deny that I didn't.

Q. I am not asking for any denials, Mr. Buchan. I am asking for what you recalled. I think you answered you recalled.

Mr. Gilmer: Your Honor, I object to Mr. Karp lecturing the witness in that manner when the witness made a perfectly logical answer. That is his own witness.

Mr. Karp: I am not lecturing him. I am trying to shorten this.

The Court: I think the witness answered frankly what

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he knows. He said what he remembered and what he didn't remember.

Mr. Karp: Yes, sir.

By Mr. Karp:

Q. You spent quite a bit of time with Kenneth Hearn of the Virginia Mirror, and Bob Stroupe. A. Yes, sir, I did.

● *Ralph G. Buchan, for Government—Direct.*

Q. You spent quite a bit of time with them? A. Yes, sir.

Q. Did you discuss prices with them? A. Yes, sir.

Q. Did you discuss about the raising of prices with them? A. I think so, yes, sir.

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Q. What were those discussions concerning the raising of prices? Just what was said? A. I don't remember specifically, sir.

Q. What was the subject you discussed? I don't mean that you tell us the exact words. Tell us what was discussed. A. I feel sure that we discussed the necessity of raising prices due to the acute shortage of plate glass that was anticipated, and in fact was in effect then.

Q. You all discussed the question of everyone raising their prices? A. I don't recall discussing that, sir.

Q. Did you discuss with Ken Hearn the raising of prices by Carolina Mirror alone? A. I don't think so.

Q. When you discussed raising of prices, were you talking about raising prices by both Carolina Mirror and Virginia Mirror? A. I don't remember that.

Q. You both thought of raising prices, is that it? A. We discussed the desirability of raising prices.

Q. Of each raising prices? A. Of just raising prices, period, as far as I can remember, sir.

Q. Of the mirror manufacturers raising prices, is

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that what you mean to say? A. I think that would be logical.

Q. By that you mean the mirror manufacturers in Virginia and North Carolina? A. I would say so, yes.

Q. Did you have similar discussions with the Messers? A. I can't say definitely whether I did or not, sir.

Q. Did you have similar discussions with Mr. Gordon? A. I don't recall that definitely, no, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. When you discussed this shortage you are talking about, with Mr. Gordon, you also discussed prices at the same time? A. I don't recall doing it.

Q. Did the price discussion creep in at that time? A. I didn't understand that.

Q. Did the price discussion creep in during those discussions with Mr. Gordon? A. I can't remember that.

Q. Did you ask Mr. Gordon what he thought you ought to do? A. I don't recall asking him that, no, sir.

Q. During the course of those discussions did you phone Mr. Gardner from time to time? A. It is my custom to call Mr. Gardner when I am away from home.

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Q. Did you apprise him of these discussions concerning prices? A. I feel sure I did, sir.

Q. You told him you were discussing those prices? A. No, I just told him there was some discussion of prices going on.

Q. Did you tell him that the discussion of prices related to raising of prices for mirrors? A. I feel sure I told him that some of the people were talking of raising prices, yes, sir.

Q. Was any discount mentioned? A. I can't definitely say, Mr. Karp. It seemed logical maybe that there was, but I can't say whether I told Mr. Gardner or not.

Q. What discount was Carolina getting at that time? A. I believe our discount then—our announced price was 80 off list.

Q. You talked about getting a lower discount, did you? A. What do you mean, a lower discount?

Q. A discount less than 80 per cent off the list. A. You mean raising the price or lowering it?

Q. You were talking about raising the price, weren't you? A. Yes, sir.

Q. That would mean you would lower the discount. A. That is correct.

*Ralph G. Buchan, for Government—Direct.*

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Q. Was any specific discount mentioned? Think about that again. A. I believe there were some discounts mentioned, yes, sir. You mean in my conversation with Mr. Gardner?

Q. Yes. A. I don't recall.

Q. Your conversations with your other mirror manufacturer representatives? A. Yes, sir.

Q. What were those that were mentioned? A. I think 77, 78, 79.

Q. Any feeling as to which ought to be established mentioned or any viewpoints? A. I don't recall any.

Q. They just threw around the prices and discounts? A. Yes, sir.

Q. As representing a suitable price to be charged? A. Yes, sir.

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Q. Was the feeling then among the mirror manufacturers—a definite feeling—that there should be a price increase? A. I cannot speak for all the mirror manufacturers.

Q. Those that you talked to. A. Those that I talked to; yes, sir.

Q. Was there a question raised as to whether that could be effected? A. I don't recall any such.

Q. Was there any question raised about whether other people or other mirror manufacturers should join in such a rise? A. I don't recall it, sir.

Q. You don't recall that? A. No, sir.

Q. Do you recall being in the room of Kenneth Hearn on October 27, 1954? A. On what day, sir?

Q. October 27, 1954. A. I was in and out of Mr. Hearn's room several times during the course of my stay in Asheville and I can't say specifically whether I was in his room that day or not.

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*Ralph G. Buchan, for Government—Direct.*

Q. Let us address ourselves to the evening of October 27, 1954. Do you recall being in Kenneth Hearn's room that evening? A. No, sir; I don't.

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Q. That night? A. No, sir.

Q. Were you together with Kenneth Hearn that night? A. I think so; yes, sir. Sometime during the course of the evening I had been with him.

Q. Do you recall being in his room in the course of the evening? A. No, sir; I don't.

Q. Do you recall being with Robert Stroupe in the course of that evening, October 27th? A. Yes, sir, I do.

Q. Do you recall being in the presence of both Robert Stroupe and Kenneth Hearn that evening? A. Yes, sir.

Q. Do you recall being in Kenneth Hearn's room with Robert Stroupe that evening? A. No, sir.

Q. Do you recall any telephone conversation made by Kenneth Hearn to a mirror manufacturer not present at the Asheville meeting that night? A. I can't say that I do, sir. That I definitely recall any telephone conversation on Tuesday evening, October 27th. That is Wednesday evening, I guess.

Q. Yes, that would be Wednesday evening, as it appears from this program.

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Would you testify that you did not or you were not present when a telephone call was made from Kenneth Hearn's room to Lenoir, North Carolina, on October 27, 1954? A. No, sir, I will not.

Q. You will not deny it? A. No, sir.

Q. Now, I asked you whether you recall such a telephone call? A. I recall such a telephone call, but I do not know what night it was made.

Q. Tell us about the telephone call you do recall, regardless of the night. A. To the best of my recollection,



*Ralph G. Buchan, for Government—Direct.*

a call was made to Lenoir, North Carolina. The call was made to Mr. A. G. Jonas of the Lenoir Mirror Company.

Q. Mr. Jonas was not a member of the Mirror Manufacturers Association, was he? A. As far as I know, he wasn't.

Q. He was not present at Asheville? A. I never did see him.

Q. He was called in Lenoir? A. That is right.

Q. Do you remember whether it was in the evening? A. I can't say for sure, sir.

Q. Who was present when the call was made?

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A. I don't recall that, sir.

Q. Was Bob Stroupe present? A. I can't say for sure whether he was or not.

Q. Do you recall someone else being present? A. Yes, sir; there were other people.

Q. Who do you recall having been present? A. Kenneth Hearn is the only one I can definitely say was in there.

Q. Did Kenneth Hearn make the call to Lenoir? A. You mean who put in the call?

Q. Yes. A. I can't definitely say whether he did or not.

Q. Do you recall Kenneth Hearn talking to Mr. Jonas on the telephone? A. Yes, sir.

Q. Did you get on the phone while he was talking? A. I did, sir.

Q. What was the subject of that telephone call? A. Regarding prices, sir.

Q. What was said to Mr. Jonas? A. Of course, I don't remember the whole conversation. I remember very little of it, as a matter of fact.

Q. Give us the substance of the conversation? A. The substance was that Kenneth Hearn had been informed by Mr. J. A. Messer, Sr., that he—I don't know whether

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he said he would or was thinking about—raising prices.

*Ralph G. Buchan, for Government—Direct.*

Q. Who had Messer told that to? A. I said to Mr. Hearn.

Q. Were you present when he told it to Mr. Hearn?  
A. No, sir, I was not.

Q. Is that what Mr. Hearn told you? A. Yes, sir.

Q. When did Mr. Hearn tell you that? A. I can't definitely say, sir.

Q. Did Mr. Hearn tell you that anybody else had told him that he was interested in raising prices? A. You mean another mirror manufacturer other than Messer?

Q. Other than Messer. A. Not to my knowledge.

Q. Did Hearn mention Messer only? A. To the best of my recollection that is the only one he mentioned.

Q. Did you hear Kenneth Hearn say over that telephone conversation that Messer had informed him that he wanted to raise prices? A. I think that was the substance of the conversation.

Q. Why should Kenneth Hearn tell that to Jonas? A. I don't know sir.

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Q. Wasn't it because Ken Hearn was interested in getting Jonas to do likewise. A. I don't know, sir.

Q. Why should he tell that to Jonas?

Mr. Gilmer: Your Honor, I object to Mr. Karp arguing with his witness.

The Court: The witness could not know if he does not know. He could not know why Mr. Hearn was talking to somebody else.

By Mr. Karp:

Q. Did you have any idea on that?

Mr. Gilmer: I object to what ideas the witness had.

The Court: Objection sustained.

*Ralph G. Buchan, for Government—Direct.*

By Mr. Karp:

Q. Did you have an interest in having that information go to Mr. Jonas? A. I can't say that I did.

Q. Was Carolina interested in raising prices at that moment? A. I would say that we were always interested in raising our prices.

Q. Were you interested in knowing the response of Mr. Jonas? A. Yes, sir.

Q. What was the response of Mr. Jonas, to your knowledge?

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A. To the best of my knowledge he told Mr. Hearn he wouldn't believe anything John Messer said at any time.

Q. Do you know why Mr. Jonas should so describe Mr. Messer? A. I think they had a little trouble in the price war starting in about 1952. I think that is when it started. It lasted quite a while, I imagine there was pretty bitter feeling between them.

Q. Was Bob Stroupe present when Hearn told you about Messer's statement? A. I don't recall whether he was.

Q. Was anyone else present besides you and Hearn? A. I don't recall.

Q. What did Hearn say when Mr. Jonas made that remark? A. I can't definitely say what he said. I can't remember.

Q. How long did that telephone call last? A. I do not remember, sir.

Q. Would you say it was more than ten minutes? A. I can't say how long it was.

Q. It was a rather extensive conversation. You recall that, do you? A. No, I don't.

Q. You don't recall it. Do you know whether

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Mr. Jonas wanted to know whether the other mirror manufacturers were going along with Messer? A. No, I don't.

*Ralph G. Buchan, for Government—Direct.*

Q. Do you recall whether Mr. Hearn told Jonas that the mirror manufacturers wanted Jonas to go along because he was a factor in the situation, being a rather large producer himself? A. I don't recall that statement.

Q. You would not deny that statement was made? A. No, I wouldn't deny it.

Q. You don't say it was not made? A. Beg pardon, sir?

Q. You are not testifying that it was not made to your knowledge? A. No, I am not testifying that it was not made.

Q. Was that the only telephone call made to Mr. Jonas that night? A. I don't know, sir.

Q. Would you say that telephone call was made on or after ten o'clock at night. Would that fit in with your recollection, Mr. Buchan? A. It didn't register at all, sir.

Q. It was not in the morning, was it? A. No, sir.

Q. It was not in the afternoon?

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A. It might have been late afternoon, as far as I know.

Q. Do you recall having dinner before that call was made? A. No, sir, I do not.

Q. Let me ask you this: Did you participate in any way at all in that conversation? Did you get on the phone at all? A. Yes, sir, I did.

Q. You spoke to Mr. Jonas? A. Yes, sir.

Q. What was said between you and Mr. Jonas while you were on the telephone? A. I believe the substance of my conversation with Jonas was that I felt that Mr. Messer maybe was sincere. Ken told me that he was sincere.

Q. Did you tell Jonas that you would like to see him go along? A. I don't recall saying that, sir.

Q. Was that the purpose in your talking to him? A. I think the purpose was to back up what Mr. Hearn had said.

Q. You work for Carolina Mirror and did at that time? A. Yes, sir.

Q. You didn't work for Jonas? A. No, sir.

*Ralph G. Buchan, for Government—Direct.*

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Q. Are you a particular friend of Jonas? A. No, sir.

Q. Mr. Gardner would be the close associate, rather than you? A. I couldn't say.

Q. You didn't know Jonas very well? A. I knew him when I saw him and spoke to him when I saw him.

Q. You called him and told Mr. Jonas that Mr. Messer was sincere, that you really thought he was going along?

Mr. Gilmer: I object to the question. There is nothing in the record about him calling Mr. Jonas. You said he called him.

Mr. Karp: Told him.

Mr. Gilmer: I beg your pardon, I thought you said called him.

Mr. Morison: Your Honor, I object also to the form of the question because he is stating as part of the evidence that Mr. Buchan has given that he was reporting to Jonas that Mr. Messer had said he would go along. There is no such testimony, that Mr. Buchan said.

Mr. Karp: I didn't ask that.

Mr. Morison: Let the reporter read it. He will straighten you out on it. I am sure you did not

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intend to.

(The reporter read the question indicated.)

By Mr. Karp:

Q. You did talk on the telephone, didn't you, with Mr. Jonas? A. Yes, sir.

Q. You were in Kenneth Hearn's room, is that correct, at the time? A. That is right.

Q. And Kenneth Hearn put in the telephone call from his room, is that correct? A. To the best of my knowledge he did.



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*Ralph G. Buchan, for Government—Direct.*

Q. And Ken Hearn talked with Jonas? A. That is right.

Q. And you heard Ken Hearn tell Jonas that Messer said he was going to raise the prices. Is that correct? Is that what you testified to? A. I will have to check the record.

The Court: He said Mr. Messer was talking about raising the price.

The Witness: I think you are right, your Honor.

By Mr. Karp:

Q. And Ken Hearn told you that Jonas said he wouldn't believe anything that Mr. Messer said. A. That is correct.

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Q. And then you got on the phone. A. Yes, sir.

Q. And you told Jonas what?

Mr. Gilmer: He has already testified to that.

The Court: He told him that he thought Messer was sincere this time about it.

The Witness: Yes, sir.

The Court: Did you tell him you were going along?

The Witness: No, sir, I did not, sir.

The Court: What was your interest in getting Mr. Jonas to believe in the sincerity of Messer if you were not going to go along with the proposition yourself?

The Witness: I had no authority to go along, your Honor. I had no authority regarding setting prices for the Carolina Mirror Corporation.

The Court: I want to know why you were urging Mr. Jonas to set aside his prejudices against Mr. Messer and believe in his sincerity for once unless you were interested in the deal.

The Witness: We were interested in raising our prices, sir.

*Ralph G. Buchan, for Government—Direct.*

By Mr. Karp:

Q. You said you had no authority to raise prices. A. That is correct.

Q. But you said you were interested in raising prices.

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You said we were interested in raising prices. By "we" you meant Carolina Mirror Company, did you? A. I think that is correct, sir.

Q. Were you told that by Mr. Gardner? A. We had been discussing the possibility of raising our prices since early in September, sir.

Q. What was the result of that conversation you and Ken Hearn had with Jonas that day? A. I think Jonas told me the same thing he told Kenneth Hearn. As far as I know, that terminated the conversation.

Q. Did he say anything to the effect that W. A. Gordon called him about the subject? A. He didn't tell me about that, sir, to the best of my recollection.

Q. To whom did he tell it, to the best of your knowledge? A. I don't know.

Q. Did Ken Hearn tell you that is what Jonas said? A. He might have.

Q. Was Ken Hearn the last one to talk to Jonas in the course of that telephone conversation? A. To the best of my recollection he was, but I could not say for sure.

Q. Do you recall that when Ken Hearn terminated the conversation that he told you that Jonas had said that

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Gordon called him? A. I can't say that for sure.

Q. Did Ken Hearn say that to you? A. I can't definitely say whether he said it to me or not, sir.

Q. Did Ken Hearn mention Gordon at all after that telephone conversation? A. I believe he did mention Mr. Gordon, but I don't recall what he said about it.

*Ralph G. Buchan, for Government—Direct.*

Q. What did you and Ken Hearn do when that telephone call was concluded? A. I can't say, sir.

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Q. Did you go to see Gordon? A. I don't recall seeing Gordon.

Q. Did you call him on the telephone. A. I don't recall calling Mr. Gordon on the telephone.

Q. Did Kenneth Hearn call Gordon on the telephone? A. I don't know, sir.

Q. Did Ken Hearn say he would call Gordon or see Gordon? A. I do not remember, sir.

Q. What did Ken Hearn do? A. I don't know, sir.

Q. Did he walk out of the room? A. I have no more recollection of that evening.

Q. You don't recall that evening? A. No, sir.

Q. I see.

The Court: Suppose we suspend here for a short recess.

(A short recess was taken.)

By Mr. Karp:

Q. You do not recall the rest of the evening.

Do you recall any other incidents in that evening? A. No, sir, I do not.

Q. Pertaining to the subject of the telephone calls you had with Jonas?

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A. I can't recall anything, period, sir.

Q. That telephone call took place on October 27th, you testified? A. Yes, sir.

Q. Is that quite definite? A. No, sir. Yes, sir, that is quite definite; yes, sir.

Q. That was Wednesday evening? A. Yes, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. The next day was October 28th and the Asheville meeting terminated? A. It ended then; yes, sir.

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Q. Do you recall what happened after you talked with Mr. Gardner at his home? A. I can't say this for sure, but I believe subsequent to that time he told me about another meeting that was to be held; yes, sir.

Q. He told you about the meeting to be held? A. I can't say for sure. I believe that is where I got the information.

Q. Did you ask him or did he tell you as to what occasioned the meeting? A. To the best of my recollection, the occasion of the meeting was to have a representative of the Carolina Mirror Corporation at a meeting between Mr. John Messer and Mr. A. G. Jonas.

Q. And any other mirror manufacturers? A. I don't recall him telling me at that time.

Q. Did he tell you who had suggested the meeting? A. I do not remember that; no, sir.

Q. Is it your testimony that Mr. Gardner advised you that a meeting was to be held with other mirror manufacturers and that you were—

Mr. Gilmer: I object. This is not his testimony. He said he didn't remember, but he thought he got the

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information from Mr. Gardner.

The Witness: That is correct.

By Mr. Karp:

Q. Is it your testimony that Mr. Gardner had instructed you to attend a meeting with other mirror manufacturers?

Mr. Gilmer: I object to the question, your Honor.

*Ralph G. Buchan, for Government—Direct.*

By Mr. Karp:

Q. Did Mr. Gardner give you any instructions concerning any meeting to be held?

Mr. Gilmer: All right.

The Witness: He did some time between the time I got home and the time I went to that meeting. When he told me I don't recall.

By Mr. Karp:

Q. What time would that have been? A. I don't know, sir.

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Q. He told you that personally or by telephone? A. I can't say that for sure either.

Q. You don't recall whether it was at his home or whether it was back at your office when you left his home? A. I don't recall where it was or how.

Q. But do you recall definitely that Mr. Gardner instructed you to attend a meeting?

Mr. Gilmer: I object, your Honor.

The Witness: I told you I thought I obtained that information from him.

By Mr. Karp:

Q. You would not attend a meeting without instructions from Mr. Gardner, would you? A. Absolutely not.

Q. Did you attend a meeting? A. Yes, sir, I did.

Q. Where was the meeting held? A. It was held at Doughton Park, Blue Ridge Parkway.

Q. Where at the Doughton Park, Blue Ridge Parkway, was it held? A. At the restaurant and the lodge.

Q. Now after receiving those instructions from Mr. Gardner, did you do anything about meeting anyone to travel to the Doughton Park at The Bluffs? A. I don't recall doing anything. I did go to



*Ralph G. Buchan, for Government—Direct.*

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Doughton Park with another individual.

Q. Who was that individual? A. Mr. Grady Stroupe.

Q. When you say you went with Mr. Grady Stroupe, you mean that you drove together? A. Yes, sir.

Q. In whose car? A. To the best of my recollection, it was my car.

Q. Who drove? A. I drove, sir.

The Court: Is it important who drove the car?

Mr. Karp: Yes.

The Court: All right, sir.

By Mr. Karp:

Q. Mr. Stroupe lives where? A. Thomasville, North Carolina. No, he lives in High Point, North Carolina.

Q. And his plant is in Thomasville? A. Yes, sir.

Q. How did you get together with Mr. Stroupe. A. I don't recall the arrangement, sir. I know he met me in North Wilkesboro, and we drove up together. How the arrangement was made I have no recollection.

Q. Were you told that Mr. Stroupe would meet you? A. I assume so. I don't recall it, though.

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Q. Did Mr. Stroupe tell you who had arranged the meeting? A. No, sir. If he did, I certainly don't remember it now.

Q. You got to The Bluffs there about what time? A. Somewhere around the middle of the day. Probably after noon.

Q. Who was there? A. To the best of my recollection, Mr. J. A. Messer, Sr., and John Nunn were there when we got there.

Q. Who is John Nunn? A. He is a grandson, I think, of Mr. J. A. Messer, Sr. Anyway he is a relative of Mr. Messer.

*Ralph G. Buchan, for Government—Direct.*

Q. Is he in the mirror business? A. He is in the mirror business now, yes, sir.

Q. How old a man is he? A. He is a young man.

Q. About how old would you say? A. He is in his early twenties, I think. I don't know him well enough to know his exact age.

Q. He is in his early twenties now? A. Yes, sir.

Q. When you say early twenties, what do you mean? Twenty-three, twenty-four? A. When you get past 25, you are in your late twenties.

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Q. This was in 1954, three years ago? A. Yes. I don't know how old John Nunn is.

Q. Are you sure it was John Nunn who was there? A. Yes, sir.

Q. You were questioned about that before, weren't you? A. Yes, sir, I was.

Q. Were you sure John Nunn was there at that time? A. No, sir, I was not. I could not remember for the life of me who that individual was. My memory has been refreshed, and I know it was John Nunn.

Q. Who refreshed your memory? A. Since this indictment has been returned, this case has been discussed so many times that my memory has been refreshed during some of those discussions.

Q. Who were the discussions with? A. Our attorneys.

Q. Your attorneys. At least there were in addition to young Nunn, four mirror manufacturers present altogether. Is that your testimony? A. I can't testify to that.

Q. Is that what you said? A. I didn't testify to that.

Q. Who was there in addition to Nunn? A. When we arrived there or during the meeting? When we arrived there?

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Q. Yes. A. Nobody was there but John Nunn and Mr. Messer.

*Ralph G. Buchan, for Government—Direct.*

Q. All right. So that made Stroupe, you, and John Messer, Sr.? A. That is right, sir.

Q. He is the gentleman who is the defendant in this case? A. Yes, sir.

Q. Did anyone else get there? A. Yes, sir, Mr. A. G. Jonas came.

Q. What time did he get there? A. I don't recall the exact time, sir. It was after we got there.

Q. Did you have lunch at The Bluffs? A. I did, sir.

Q. Who did you have lunch with? A. With all of the gentlemen named, including Mr. Jonas.

Q. When Mr. Jonas got there, the five of you had lunch? A. That is my recollection.

Q. Did you discuss anything concerning the matter of prices at that time, at lunch? A. I do not believe so, sir.

Q. What time did you get through with your lunch? A. I couldn't say for certain. It was the normal

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time it takes to eat your lunch. I don't recall how long it took.

Q. You say that morning you left Asheville? A. I didn't—

Q. You left Asheville that morning? A. That is right.

Q. October 28? A. That is right.

Q. That was after breakfast? A. That is right.

Q. How long a trip is it in terms of hours from Asheville to North Wilkesboro? A. I would say it is 110 miles.

Q. 110 miles? A. Close to that.

Q. So that was around noon or so when you got to Wilkesboro, was it? A. Yes, sir.

Q. Then you went home and then you saw Mr. Gardner at his home and then you went to the office? A. That is right.

Q. And then you met Grady Stroupe? A. I didn't say I met Grady Stroupe on that day, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. Where did you meet Grady Stroupe? A. To the best of my recollection it was on Friday.

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Q. On Friday. Didn't you drive to The Bluffs that day? A. To the best of my recollection that meeting was on Friday.

Mr. Gilmer: Your Honor, I think I should object to this point. The witness has testified when he came back from Asheville and when he went to The Bluffs. This is just a repetition of all that testimony.

Mr. Karp: I want to establish the date and time.

The Court: He didn't say what day he went up to Doughton Park.

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Mr. Karp: It might have been my fault. I had the impression that all happened in one day. That is why I was trying to piece that together.

Mr. Gilmer: No, sir. The witness did not testify to the same date.

Mr. Karp: All right.

Mr. Gilmer: May we see the original of that exhibit?

Mr. Karp: Yes. Let us not confuse the record.

Mr. Gilmer: I want to see the original.

Mr. Karp: I will be glad to. I will take it right over to you as soon as I mark it for identification.

Mr. Lee: I understood it had been marked.

Mr. Karp: Not in the record. We want to get the record straight, Mr. Lee.

I am having marked for identification as Exhibit No. 67 a card called "Registration Card No. 110868", and a bill—

Mr. Gilmer: I will stipulate with you if you will hand them to me. It will save time.

The Court: Let him go ahead.

*Ralph G. Buchan, for Government—Direct.*

Mr. Karp: Bearing the printed words, "The Bluffs Lodge", as Exhibit No. 68.

Mr. Rogers: Which is 67 and which is 68?

Mr. Karp: The registration card is 67, sir; the

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bill is 68.

The Court: Is that the registration card of this witness at the Doughton Lodge?

Mr. Karp: This, your Honor, is the registration for Doughton Lodge. We will have a witness to identify it.

The Court: Registration for whom?

Mr. Karp: The name of Carolina Mirror Company dated October 28, 1954.

Mr. Gilmer: Wait a minute. October 29?

Mr. Karp: Suppose I show it to you. The bill says arrived October 28, 1954, and says date, October 28, and under depart, it says October 29. We will have a witness from the Park, if there is any question about it.

The Court: I don't suppose this gentleman, Mr. Buchan, is going to deny it. If he went there, he will tell you about it.

Mr. Lee: Your Honor, we have been trying to see this.

By Mr. Karp:

Q. Would this refresh the date?

Mr. Gilmer: I know Mr. Karp would not confuse anybody, but at a place like that they charge for a whole day.

The Court: You can ask the witness about that.

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Mr. Lee: May I see the originals?

Mr. Gilmer: It is confusing if you don't understand the registration. If it is the 29th, they would



*Ralph G. Buchan, for Government—Direct.*

have the 28th and the 29th. He didn't read it all, but it is on the card.

By Mr. Karp:

Q. Who made the reservation for the day room? A. I don't know.

Q. Was there a reservation made for a day room? A. Not to my knowledge there was not any reservation made.

Q. Would you read this registration card? A. All the figures everywhere?

Q. No, just read the name on the card. A. Carolina Mirror Corporation, and written in pencil here, "A day room, North Wilkesboro, North Carolina, Room 200-B, Rate \$5, dated 10/28/54" and the initial by the clerk.

Q. Would this refresh your recollection as to when you were up at The Bluffs? A. No, sir, it doesn't. I have always thought that meeting was on the 29th of October, and that is still my recollection. If it was on the 28th, it was on the 28th. I can't say.

Q. All right. You got there at the restaurant around

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lunch time anyway. Is that clear in your mind? A. Yes, sir.

Q. Anywhere between 12 and 2 o'clock? A. Yes, sir.

Q. And then you had lunch. A. Yes, sir.

Q. You spent about an hour for lunch? A. I would say approximately that.

Q. Where did you go? A. We went to the Lodge.

Q. Where is the Lodge located? A. It is located across the main Blue Ridge Parkway road, about 300 yards, I guess, maybe in a south direction.

Q. You mean the restaurant is off the road, is that correct? A. That is right.

Q. And then you cross the road. A. That is right.

Q. And you go up a winding hill? A. Yes, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. Up on top of the hill is the Lodge? A. That is the general location, yes, sir.

Q. Did someone rent a room? A. Evidently.

Q. This registration card which I showed you marked

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for identification has the name "Carolina Mirror Company" on it. A. Yes, sir, it does.

Q. Did you register for that room? A. I don't recall registering for it, sir. I knew the people that operated that Lodge and I probably did make the arrangements.

Q. Were the arrangements made in advance? A. No, sir.

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Q. You don't know who made the arrangements. Do you know for a fact that you made the arrangements? A. I don't know for sure. I feel pretty sure I did.

Q. Do you think it was Mr. Gardner that made the arrangements? A. No, I am sure.

Q. How do you know, if you were not sure before? A. I don't know how he could have made it.

Q. I showed you this card.

The Court: Mr. Karp, is it important who made the reservation for the room?

Mr. Karp: It might be.

The Court: This gentleman is representing the Carolina Mirror Company. Whether he called up and made the reservations or whether Mr. Gardner made up the reservations, if there is any materiality to it you may go ahead. Why in the world does it make any difference who made the reservations?

Mr. Karp: It might be material if Mr. Gardner did. Mr. Gardner is a defendant in this case.

The Court: I know he is and he said Mr. Gardner sent him up there.

*Ralph G. Buchan, for Government—Direct.*

By Mr. Karp:

Q. What time would it have been, then, that you got to the lodge?

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A. I would say around two o'clock or maybe a little after; somewhere in that neighborhood.

Q. Did you all close the door, of course? A. Close the door where, sir?

Q. To the room. You went up to Room 200-B did you?

A. I don't know what the room number was. That is what that says.

Q. You all got in the room? A. Yes, sir.

Q. What kind of a room was it? A. A bedroom, sir.

Q. You sat around the room and you talked? A. Yes, sir.

Q. How long did you talk? A. I don't recall how long we talked.

Q. Would it have been an hour or two? A. It is possible.

Q. What did you talk about? A. Discussed the price situation.

Q. Was any discount or any list prices mentioned? A. I believe there were, sir.

Q. What was mentioned? A. I believe several discounts were mentioned, 77, 78, 79.

Q. When you say 77, 78 and 79 were mentioned, do you mean

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that they were referred to as possibilities of prices to be quoted furniture manufacturers? A. No, sir. They were mentioned. I don't know what—

Q. Tell the Court and jury what was said during those two hours. A. I didn't say we were up there two hours.

Q. How long were you there? A. I don't know how long.

Q. Was it an hour? A. I said it was possible.

Q. I thought you said it might have been an hour or two. A. It is possible.

*Ralph G. Buchan, for Government—Direct.*

Q. During the period of time you were there, tell the Court and jury what was said. A. I don't remember everything we said. I can tell you pretty much the substance of it, Mr. Karp.

Q. Please. A. I think Mr. Messer initiated the conversation. He said that he had been accused of starting this drastic price war which we had just been through and were still going through, and that he was going to raise his prices.

Q. Did he say he was going to or was willing to? A. I don't recall his exact words, whether he was going to or willing to.

Q. All right.

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A. It seems to me he said he was going to. That is my recollection. I don't know what transpired then, but he and Mr. Jonas got into a terrific hassle. I thought they were going to come to blows. The luncheon meeting had been very congenial, but after the first two or three minutes in this meeting at the lodge, it looked like there might be a free-for-all break out at any time.

Jonas jumped on Mr. Messer and said he was the worst price cutter there was living; or words to that effect, and couldn't believe a word he said, he was undependable. Then Mr. Messer took the conversation back again and he got on Mr. Gardner and went into a long harangue about what kind of a fellow he was.

Q. Who did this? A. Mr. Messer. None of it complimentary. Then he started that Mr. Gardner was sick, sending me up there just to find out what was going on. Somebody, I don't recall who, sort of quieted the thing down. I think Messer said then that we all had to raise our prices and to get a letter out on the same day.

I think at that point Mr. Stroupe got up and said that he didn't come up to that meeting for that purpose. He felt that he had wasted his time, or words to that effect.

*Ralph G. Buchan, for Government—Direct.*

I believe he got up to leave. I think it was Mr. Jonas who said, "Sit back down," that John was calling the shots.

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Some time during the conversation somebody asked me if Carolina Mirror would get out such a letter. I told them I had no authority whatsoever to commit Carolina Mirror for anything.

Q. You had no authority to commit them to the letter you told them? A. To anything regarding prices.

Q. Did you tell them anything else about Carolina? A. I don't recall.

Q. Did you tell them you would have to see Mr. Gardner and report it back to Mr. Gardner? A. I told them I was going to give Mr. Gardner a report of the meeting.

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Q. When you say Mr. Stroupe said he didn't come up there for that purpose, for what purpose did Mr. Stroupe come up there? A. I don't know what Mr. Stroupe came up there for and I don't know what purpose I came up there, other than to listen to what the fellows had to say. That was my instructions from Mr. Gardner. He told me he didn't know what the purpose of the meeting was, but to go up there and find out as much as I could and come back and report it to him. I did that.

Q. Did Mr. Stroupe say he would not raise prices? A. I don't recall Mr. Stroupe saying that, no, sir.

Q. Wasn't Mr. Stroupe kind of happy when they got together on a price? A. I don't know, sir.

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Q. What prices did you discuss? A. The price of 77, 78, I think, and 79. I can't say positively. That is the best of my recollection.



*Ralph G. Buchan, for Government—Direct.*

Q. With respect to 77 was anything said about whether that was too high or too low? A. I can't recall that, sir.

Q. With respect to 79, was anything said about that

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being too low. A. It might have been, but I can't recall it.

Q. Was anything said about 78 being just right? A. I think it was, sir.

Q. Did Mr. Stroupe say 78 per cent was not just right? A. I don't recall Mr. Stroupe saying anything about prices.

Q. Did Mr. Stroupe say that he did not want to raise prices? A. I didn't hear him say that, nor sir.

Q. As a matter of fact, you know that after the meeting Mr. Stroupe did send a letter raising prices, don't you? A. I have heard the testimony, yes, sir.

Q. Are you saying here that Mr. Stroupe said he was not going to raise prices? A. I didn't say that, Mr. Karp.

The Court: He did not say anything like that. All he said was that Mr. Stroupe did not come up there to discuss prices.

Mr. Gilmer: Just a minute, Mr. Karp. Let me make an objection to the Court, please.

Mr. Karp: Yes.

Mr. Gilmer: Your Honor, I object to Mr. Karp continually misquoting the witness on the record, and

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I submit to the Court that these events happened more than three years ago. I think the witness is trying to answer Mr. Karp's questions the best he knows how and the best he can recall. I think it is unfair for him to misquote the witness.

The Court: Certainly it is unfair if he is misquoting the witness. I make allowance for the fact that it was three years ago. But it took quite a while to get this witness to admit that they finally agreed up there that 78 per cent discount would be about right.

*Ralph G. Buchan, for Government—Direct.*

Mr. Gilmer: He has not said they agreed to 78.

The Court: It was said that would be about right. I don't know whether he said they agreed on that.

Mr. Gilmer: No, sir, that somebody said 78 would be about right.

The Court: Read what he said about that, Mr. Reporter.

(Portion of record read by the reporter.)

Mr. Gilmer: Your Honor, that does not indicate that he was reluctant to answer that question.

The Court: Yes, I think it does, if you want a frank answer.

Mr. Gilmer: I beg your Honor's pardon. I did not construe it that way.

Mr. Humrickhouse: We would like to register our

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objection to the Court's use of the term "agreed" when the witness did not say such a word.

The Court: What is that?

Mr. Humrickhouse: We would like to object to the Court's use of the word that they "agreed" upon the price when the witness did not say that.

The Court: I withdraw that.

Mr. Humrickhouse: I did not hear you say that, sir. I am sorry.

The Court: I said I was mistaken in saying that they had agreed. I did say that the witness did say that there was a discussion of 78 per cent and someone said that was about right. That is what the witness said.

Mr. Humrickhouse: Yes, sir.

By Mr. Karp:

Q. Did anyone there say that 78 per cent was not about right? A. I don't recall anybody saying that.

Q. Did Mr. Stroupe register a protest? A. I don't recall it.

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Q. How long had you been there discussing prices when that 78 percent figure was stated to be right? A. I can't recall.

Q. Or about right? A. I can't recall that, sir. It is very difficult for me to recall the sequence of things that took place at that meeting.

Q. Did anybody say they would not go along with that price? A. I don't recall anybody saying that they would go along or they wouldn't go along.

Q. I believe you mentioned the fact of a letter. How did that letter come up? A. What letter is that, sir?

Q. Did you mention a letter? Did you say something about a letter?

Mr. Gilmer: No, sir.

Mr. Karp: I thought he did.

Mr. Gilmer: I know.

Mr. Karp: It doesn't matter.

Mr. Gilmer: Yes, it does matter.

The Court: What is that?

Mr. Gilmer: That's the instance when he asked him, "What did you say about a letter," when he did not say anything about the letter.

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The Court: He did. He said Mr. Messer said they should raise prices and all get out a letter dated the same date. Didn't you say that?

The Witness: Yes, sir.

Mr. Gilmer: I believe he did. I beg your pardon. I am in error about that. That is right. I beg your pardon.

By Mr. Karp:

Q. What did the others say to that suggestion by Mr. Messer? A. I don't recall what Jonas said.

*Ralph G. Buchan, for Government—Direct.*

Q. What did you say? A. As I said a while ago, I told them I had no authority regarding prices. I couldn't commit Carolina Mirror regarding anything.

Q. You told them you would have to see Mr. Gardner about it; is that correct? A. I told them I was going to report to Mr. Gardner.

Q. That was about the letter that you were talking about. You were sent up there to discuss prices by Mr. Gardner, weren't you? A. No, I was not. I told you a while ago why Mr. Gardner sent me.

Q. You mean you were surprised when you got there and found them discussing prices?

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The Court: Mr. Karp, don't interrupt the witness when he is answering.

Mr. Karp: I thought he had finished. I am sorry.

(The pending question was read by the reporter.)

The Witness: I don't know whether I was surprised or not. I don't recall whether I was surprised or not.

By Mr. Karp:

Q. Weren't prices being discussed for the past few days at Asheville? A. The price situation had been discussed in Asheville; yes, sir.

Q. And you had called Mr. Jonas about price rises?

Mr. Gilmer: What was that question?

By Mr. Karp:

Q. And you talked with Mr. Jonas on the telephone in Ken Hearn's room? A. I talked to Mr. Jonas; yes, sir.

Q. And you assured Mr. Jonas that Messer would adhere to the price? A. I did not assure him; no, sir.

*Ralph G. Buchan, for Government—Direct.*

Q. You gave some assurance to Mr. Jonas regarding Messer, didn't you?

The Court: He told you what he said. He told Jonas that he believed Messer was sincere.

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By Mr. Karp:

Q. When you got up to the Bluffs and found Messer and Jonas and Stroupe there, you were surprised that they were going to talk prices? A. I said I didn't know whether I was surprised or not.

Q. But you sat there and discussed prices? A. Yes, sir.

Q. Out in that bedroom? A. I didn't discuss prices. I had practically nothing to say the whole time I was in there.

Q. You were listening? A. Yes, sir.

Q. Did Mr. Messer say that he wanted all the mirror manufacturers to send letters or there would be no agreement? Is that what he said? A. I don't recall him saying that; no, sir.

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Q. What did he say about the letter exactly? A. I think after his initial statement, there was not much mention any more of the letter.

Q. What was his initial statement again? Let us have that clearly. About the letter. A. My recollection is that he initially said he was going to issue a letter raising prices. Then later on in the conversation he said that we all had to issue a letter.

Q. All right. Did he say anything about other mirror manufacturers not represented or not present at that meeting? A. I don't recall him. He might have. I don't recall.

Q. Was there any discussion at that meeting about other mirror manufacturers? A. I don't recall any, sir.



*Ralph G. Buchan, for Government—Direct.*

Q. Was there anything said about notifying other mirror manufacturers who were at the Asheville but not at The Bluffs? A. I don't recall that, sir.

Q. Was anything said to Mr. Jonas that other mirror manufacturers at The Bluffs were ready to go along and they were waiting to see whether Mr. Jonas would? A. I don't recall such a thing.

Q. Was Asheville mentioned at all? A. I feel sure it was.

Q. In what way?

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A. I don't recall the specific instance or how it was mentioned.

Q. Were the names of other mirror manufacturers at Asheville mentioned at that Bluffs meeting? A. I don't recall them being mentioned.

Q. You say Asheville was mentioned? A. Yes, the Asheville meeting was mentioned.

Q. In what way? A. It might have been mentioned—I am sure it was mentioned regarding what the plate glass people had to say.

Q. Yes, but you were talking about prices. A. I don't recall the price discussion at Asheville being mentioned.

Q. You don't recall it? A. That is right, sir.

Q. Are you sure it was not mentioned? A. I am not sure, no.

Q. Now, you had four competitors there, is that right? A. That is correct, sir.

Q. Who were those four competitors, by corporations?

A. There were only three there, sir. Three competitors.

Q. Who were the competitors by corporation? A. Stroupe Mirror Company.

Q. That is one.

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A. Lenoir Mirror Company.

Q. Two. A. And Galax Mirror Company.

*Ralph G. Buchan, for Government—Direct.*

Q. Three. A. I guess he represents Mount Airy.

Q. Is that four? A. I don't know whether he was speaking for Mount Airy.

Q. Was Carolina represented? A. Yes, sir, I was there.

Q. That is five? A. That is right.

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Q. Now, here you are at The Bluffs and you talked about a discount. Was anything said about what Virginia Mirror wanted to do about a discount? A. I don't recall that, sir.

Q. Was anything said about any other mirror manufacturer who was at Asheville and not at The Bluffs? A. I don't recall any other mirror manufacturer being mentioned.

Q. Was there anything said about contacting Weaver Mirror Company after the meeting at The Bluffs and tell them the results? A. I don't recall that.

Q. Was anything said about contacting anyone else? A. I said a while ago I do not recall that.

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Q. What did Jonas say about writing a letter? A. I don't recall Mr. Jonas saying anything about writing a letter.

Q. Now, after this meeting at the Lodge, where did you go? A. I went back to North Wilkesboro, sir.

Q. What time was that? A. In the late afternoon. I don't remember the specific time.

Q. Did you go back to North Wilkesboro? A. Beg pardon?

Q. Did you go back to North Wilkesboro? A. I just said I did.

Q. What did you do when you got back? A. I went out to the office.

*Ralph G. Buchan, for Government—Direct.*

Q. Then what did you do? A. I went up to Mr. Gardner.

Q. Was Mr. Gardner at the office? A. No, he was at his home.

Q. He was at his home. Did you report to Mr. Gardner about the meeting at the Lodge? A. Yes, sir, I did.

Q. What did you tell Mr. Gardner? A. I told him exactly what transpired up there.

Q. Did you tell him that any of the mirror manufacturers

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were going along on a 78 per cent-discount?

Mr. Gilmer: I object, your Honor. He told him what transpired, and he has testified what transpired.

The Court: He can say he did not tell him that.

The Witness: What was the question?

(The reporter read the question indicated)

The Witness: No, I don't think so. I did tell him what Mr. Messer said as we were leaving. Mr. Messer said, the substance of it was that we could all go to hell, he was going to raise his price to 78 and we could do what we wanted to.

By Mr. Karp:

Q. Mr. Buchan, did you not testify here that Mr. Messer said he wanted everybody to send letters? A. Yes, sir, he did.

The Court: He has already so testified.

By Mr. Karp:

Q. Did you tell Mr. Gardner that? A. Yes, sir.

Q. Was it said at the Bluffs that the letter shall be to the furniture trade, furniture manufacturers? A. I don't think it was specifically mentioned, but I am sure that is what everybody understood.

*Ralph G. Buchan, for Government—Direct.*

Q. Was it also mentioned, or understood, that the letter would state a quotation of 78 per cent?

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A. Mr. Messer said that in the beginning, as I testified before.

Q. Did you tell all that to Mr. Gardner? A. I gave him a complete report, as I said a while ago.

Q. Then what did Mr. Gardner say? A. I don't recall what he said immediately after that. He debated over what I had said. He finally said, after much discussion between the two of us, that if Messer, what I told him he said when he was leaving, that we might as well take advantage of it and get a letter out ourselves.

Q. Who dictated that letter? A. I do not remember, sir.

Q. Who signed it? A. Mr. Gardner signed it to the best of my knowledge.

Q. I show you Government's Exhibit No. 10 and ask you if it refreshes your recollection as to who dictated the letter.

A. Mr. Gardner did.

Q. I show you the price schedule attached to that letter which says plain edge mirrors, 78 per cent discount from April 1, 1950, mirror list, also dated October 29, 1954, and ask you who dictated that. A. I can't say positively who did.

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Q. Was this prepared on the basis of the letter of October 29? A. I would think so, yes, sir.

Q. Did you receive instructions from Mr. Gardner to prepare a price schedule showing plain edge mirrors, 78 per cent discount from the April 1, 1950 mirror list? A. Yes, sir.

Q. When did you receive that instruction? A. That afternoon.

Q. Was it in the course of that very conversation you had with Mr. Gardner? A. Yes, sir.

*D. F. Arden, for Government—Direct.*

Mr. Karp: I think that is all I have from this witness at the present time.

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D. F. ARDEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Carlson:*

Q. Would you state your name, sir? A. D. F. Arden.

Q. What is your residence, Mr. Arden? A. Asheville, North Carolina.

Q. Would you tell the Court and jury what your occupation is? A. I am an accountant, sir.

Q. Have you ever been in the employment of the Grove Park Inn, Asheville, North Carolina? A. Yes, sir, I have.

Q. Directing your attention to the period subsequent to 1940, would you tell the Court and jury what your employment connections have been with the Grove Park Inn?

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A. From about 1930 to 1940, I was connected with the hotel in all phases of it, even up into the managerial.

Q. As to the period 1950 through 1954, did you have duties in connection with the Grove Park Inn operations that brought you into regular contact with the documents and records of the Grove Park Inn? A. Yes, sir. I was acting as outside accountant for them.

Q. As such, did you go to the hotel and look at the records and examine the records from time to time in the course of your duties? A. Yes, sir.

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Q. Mr. Arden, I will hand you Government's Exhibits marked for identification numbered 69, 70, 71, 72 and Gov-



*D. F. Arden, for Government—Direct.*

ernment's Exhibit No. 85, also marked Defendants' Exhibit No. 27, and ask if you can identify these records. A. Yes, sir. They are a record of the placing of long distance telephone calls.

Q. For the Grove Park Inn? A. No, sir, for the individual's name at the top of the slip.

Q. Maybe I was not understood, Mr. Arden. Are they records of the Grove Park Inn for placing of the telephone calls? A. That is right.

Q. They are records regularly kept by the Grove Park Inn in connection with the placement of telephone calls? A. That is true, sir.

Mr. Carlson: I offer in evidence Government's Exhibits Nos. 69, 70, 71, 72 and 85, 85 also being marked for identification as Defendants' Exhibit No. 27.

Government's Exhibits Nos. 69, 70, 71, 72 and 85, last above referred to, admitted in evidence.

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Q. Mr. Arden, I hand you Government's Exhibits Nos. 69, 70, and 72, and I ask you if there is any information on those tickets from which you could tell the sequence in which the calls were placed. A. The sequence in which the calls were placed, sir, would be denoted by the serial number of the ticket.

Q. Could you tell the Court and jury from that, then, the sequence in which the calls were placed? A. You want the name of the party and so forth?

Q. Yes, sir, and to whom. A. Ticket No. 07144 was made out in the name of Mr. Kenneth Hearn, Room 443, and he called the City of Lenoir and talked for 12 minutes.

Q. Is there any indication what time that was made? A. 10:11 p. m., October 27th.

Q. And the next one, sir? A. Ticket 07145, Mr. W. A. Gordon, Room 369, called Lenoir, North Carolina, talked 14 minutes on the 27th of October. October 27, 10:43 p. m.

*D. F. Arden, for Government—Cross.*

The next ticket, 07146, Mr. Hearn, Room 443, called Lenoir, North Carolina, talked four minutes, October 27th.

Q. Is that Hearn? A. Hearn; yes, sir.

Q. Where did he call, sir?

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A. Lenoir. There seems to be a failure of a time stamp on the back of this one.

Q. Let me review, then, Mr. Arden, and you correct me if I am mistaken.

Mr. Gilmer: We object to review, your Honor.

Mr. Carlson: I withdraw the question, your Honor.

I have no further questions.

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*Cross examination by Mr. Humrickhouse:*

(For Pittsburgh Plate Glass Company and W. A. Gordon:)

Q. You have testified regarding the time stamp. Would you explain to the Court and the gentlemen of the jury the mechanics of handling the telephone call and when the time stamp is placed on it, if you know? A. Sir, the time stamp should be placed on the ticket directly after the operator hands it to the clerk-cashier to be posted on the individual's account. There have been known instances, and several instances, of that time stamp not having been placed there through error of either the telephone operator or the clerk.

Q. So the telephone operator does not place the time stamp on there? A. No, sir; not as a rule.

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Q. It is placed on there as a bookkeeping entry so that the cashier may know what account to charge and the time of the charge? A. Yes, sir.

*D. F. Arden, for Government—Re-direct.*

Mr. Humrickhouse: That is all.

The Court: Mr. Arden, who does note on the call the time of the call?

The Witness: You say who puts the time on it?

The Court: Somebody has to note the call when the call started and when it ended in order to know how much to charge the guest at the hotel.

The Witness: That is reversed back to you by the operator. The telephone company operator.

The Court: The telephone company operator in the city?

The Witness: Yes, sir, in Asheville. As soon as the call is completed and they have hung up, she immediately calls back to the hotel operator and tells her how much the charge is.

The Court: I see.

*Redirect examination by Mr. Carlson:*

Q. Mr. Arden, when is the notation made as to the time of the call? Would you explain to the Court and jury exactly what happens as between the telephone operator and the clerk

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in marking time stamps on the calls? A. The telephone operator, as soon as she has gotten her charges, it is torn out of her book—those come out of a perforated book—and it is laid over on the cashier-clerk's desk.

In the event he is not busy right at that second, it is time stamped. But if he should be busy, there may be a lapse of five or ten minutes, or it could be longer.

Q. How much longer could it be? A. If I can use the association that we have here, the Mirror Manufacturers Association, if there had been a time that they were all at the desk and milling around the desk, the whole desk would have been busy, so you may have had quite a number of charges pile up as much as 30 minutes.

*Robert Stroupe, for Government—Direct.*

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ROBERT STROUPE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. Will you please state your name for the record? A. Robert E. Stroupe.

Q. Will you give your address, please? A. 1112 Club Drive, High Point, North Carolina.

Q. With whom are you associated in business? A. With the Stroupe Mirror Company.

Q. In what capacity? A. Vice President.

Q. Do you handle any particular phase of the business?

A. Well, I work in a small organization like ours—

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Q. I didn't ask you that.

The Court: Let the witness answer, Mr. Karp.

Mr. Karp: All right, sir.

The Witness: I work in sales and production and about every phase of the business.

By Mr. Karp:

Q. Are you related to Grady V. Stroupe? A. Yes, sir. I am his son.

Q. Who is president of the organization? A. My father, Grady V. Stroupe.

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Q. When did you arrive at the Grove Park Inn? A. I arrived at Grove Park on Monday.

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Q. Would that have been October 25, 1954? A. I believe that is correct.

*Robert Stroupe, for Government—Direct.*

Q. Did Grady Stroupe attend? A. No, sir.

Q. Where was he at the time? A. He remained at home.

Q. How long did you stay at the Grove Park Inn? A. I stayed until Thursday.

Q. That would have been October 28th, would it? A. I believe so, sir.

Q. I show you the program of the meeting and ask you if this refreshes your recollection as to the length of time you actually stayed at Grove Park Inn? A. I left on Thursday morning, sir, the 28th.

Q. Did you meet any mirror manufacturers in the south-east on the occasion of your stay at Grove Park Inn? A. Yes, sir; I did.

Q. Who did you meet? A. I met Mr. Hearn.

Q. Will you state the connection with the companies for the benefit of the Court? A. I met Mr. Hearn of the Virginia Mirror Company. I met Mr. Weaver of the Weaver Mirror Company. I met Mr. Messer, Sr., and Mr. Messer, Jr., of the Galax Mirror Company, and Mr. Buchan of the Carolina Mirror Company.

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Q. Did you meet Mr. Gordon of Pittsburgh Plate Glass Company? A. Yes, sir.

Q. Did you have any discussions with those gentlemen regarding prices? A. Yes, sir; I did.

Q. Were those concerning prices for plain plate glass mirrors? A. Yes, sir.

Q. Will you state the substance of those conversations concerning prices for plate glass mirrors that you had with those gentlemen?

Mr. Lee: Your Honor, I object. Mr. Karp says "those gentlemen." I would like to know the specific gentlemen, not just a group, that he happened to meet there at different times. I think he should be specific as to whom he talked about prices.

Mr. Humrickhouse: If your Honor please, we would like to object to the form of the question. We



*Robert Stroupe, for Government—Direct.*

think we ought to point to the time of the separate and several discussions, if there were more than one.

The Court: Unless the witness says he can identify the time, I don't see any necessity for it. Maybe the witness knows the time. I don't know. He asked him for the substance of the conversations.

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Go ahead, Mr. Stroupe.

The Witness: All right, sir.

My first recollection of discussing prices with anyone was, I believe, the evening—I can't be absolutely certain of the time and date—but I think it was Monday evening, the day of my arrival. Mr. Hearn and I were having dinner together. We were partially through dinner and prices had not been mentioned. Mr. Hearn was leaving the Virginia Mirror Company and was telling me of his future plans, when Mr. Messer, Sr., came over to the table and sat down and began talking to us.

He talked first about Mr. Hearn's leaving the Virginia Mirror Company and what a loss it was to the mirror industry, and then we brought up the subject of the plate glass shortage, and Mr. Messer said that it was his plan to send out a letter announcing a price change to 78.

That is the first discussion of prices I recall.

By Mr. Karp:

Q. What did Mr. Hearn and you say? A. I don't recall exactly what Mr. Hearn said, but I think he reacted favorably. My reaction to it I can't recall verbatim, but I didn't believe it.

The Court: You didn't what?

The Witness: I did not believe it, your Honor.

The Court: Did not believe it?

*Robert Stroupe, for Government—Direct.*

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The Witness: No, sir.

The Court: You mean you didn't believe in the proposition or you didn't believe Mr. Messer? Which?

The Witness: I didn't believe Mr. Messer.

By Mr. Karp:

Q. Now, did you have any discussions with any other of the mirror manufacturers you mentioned? A. Yes. I talked to Mr. Hearn about this, of course. I also talked to Mr. Buchan about it.

Q. Along what line were those conversations? A. Well, that I was generally in favor of it. I thought it was a good idea. We needed more money for our product.

Q. They were in favor of the idea of raising prices to 78 percent? A. Yes, sir; I think they were.

Q. Did you talk with Mr. Weaver about that? A. I did not talk to Mr. Weaver about prices at any time that I recall.

Q. Did Mr. Hearn tell you that he talked with Mr. Weaver? A. No, sir.

Q. Did Mr. Buchan? A. No, sir.

Q. You talked with Mr. Weaver after the conversation you had with Hearn and Messer, did you?

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A. I only remember one occasion on which I talked to Mr. Weaver, and that was on Thursday morning, the day I left, and I went down to get breakfast. I ran into Mr. Weaver in the lobby. We went into the dining room together and had breakfast together. But I do not recall any discussion of price.

Q. Did you consider Mr. Weaver a factor in the situation?

*Robert Stroupe, for Government—Direct.*

Mr. Holton: Your Honor, could counsel make that question a little clearer. I am not sure I understand it myself.

The Court: Yes, I don't know what situation he is talking about.

By Mr. Karp:

Q. Did you consider Mr. Weaver a factor in the pricing situation?

Mr. Holton: If your Honor please, I believe the same objection still applies to that question, sir.

The Court: I will let him answer. The question is pretty vague, but I will let him answer it the best he can.

The Witness: I am not at all certain, Mr. Karp, what you mean by "a factor." Mr. Weaver has been a person we have known for years. He has never particularly attempted to sell, as far as I know, in North

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Carolina or the other areas in which we sell and we have just never run into him much.

By Mr. Karp:

Q. He has been selling in Virginia, has he not? A. Yes, sir.

Q. Virginia Mirror Corporation sells in Virginia, does it not? A. Yes, sir; as far as I know.

Q. Galax Mirror Company sells in Virginia, does it not? A. As far as I know.

Q. And Mount Airy Mirror Company sells in Virginia? A. I have no information.

Q. Does Carolina Mirror Corporation sell in Virginia to your knowledge? A. I couldn't say that they do. I don't know.

*Robert Stroupe, for Government—Direct.*

Q. You are familiar with the operations of the Carolina Mirror Corporation operations? A. Not fully; no, sir.

Q. Are you familiar with the fact that Carolina Mirror Corporation is a very large mirror, manufacturing corporation? A. Yes, sir, we are very much aware of that.

Q. Aren't you familiar with the fact that Carolina Mirror Corporation sells mirrors to the furniture manufacturers located in Virginia? A. No, sir; I am not.

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Q. You don't know that? A. I am not certain that I do know that.

Q. You did talk with Mr. Weaver? A. Yes, sir; I had breakfast with him.

Q. How long did you sit with him at breakfast? A. Mr. Karp, I haven't any idea whether it took us 30 minutes to eat breakfast or less or more.

Q. What did you talk about at breakfast? A. Well, I only recall one thing, and it was an amusing incident, and I don't think that it is of the type that should come out in the courtroom.

Q. Is that the only thing you talked about, one amusing incident? A. It is the only thing I recall, Mr. Karp. It is the only thing I remember.

Q. Did you talk about glass at all? A. It is possible.

Q. Did you talk about plate glass mirrors? A. Mr. Karp, I don't remember.

Q. Did you talk about the availability of glass? A. Probably did. I don't specifically remember it, though.

Q. Did you talk about the price of glass? A. I don't remember that.

Q. Did you say anything at all about prices?

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A. I don't remember saying anything at all about price.

Q. Do you remember not saying anything about prices?

*Robert Stroupe, for Government—Direct.*

The Court: That is enough.

Mr. Karp: All right, sir.

By Mr. Karp:

Q. Were you in the room of Mr. Kenneth Hearn on October 27, 1954? A. October 27th?

Q. Yes. Looking at this program, it would appear to be Wednesday night. A. I would say it is safe to say I was. I think I was in the room every day I was there.

Q. Were you there Wednesday evening? A. I think so, sir.

Q. Were you there around ten o'clock Wednesday night? A. I don't know the hour, sir. I could have been.

Q. Were you there when a call was made from Kenneth Hearn to Lenoir? A. Yes, sir.

Q. Who made the call? A. I don't know, sir. I don't know who made the call.

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Q. You were there when Hearn was talking to someone in Lenoir? A. Yes, sir.

Q. Who was he talking to? A. I know he was talking to Mr. Jonas.

Q. Mr. Jonas of the Lenoir Mirror Company? A. Yes, sir, Mr. Jonas of the Lenoir Mirror Company.

Q. What did you hear said during that telephone conversation? A. I don't know exactly what Mr. Hearn said, but I have a pretty good idea of what was said. I think that either Mr. Hearn or someone acquainted Mr. Jonas with Mr. Messer's statement that he was going to send out a letter. I talked to Mr. Jonas myself about it.

Q. What else was said? A. I think that is about all that was said about the thing.

Q. Was anything said to Mr. Jonas that the mirror manufacturers were interested in raising their prices? A. I don't know that anything was said about the mirror manufacturers. I expressed my personal interest in raising prices.



*Robert Stroupe, for Government—Direct.*

Q. You said something was said about a letter. A. Yes. One of us, or possibly all of us, quoted to Mr. Jonas Mr. Messer's statement.

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Q. What was that statement? A. The statement was that he was going to send out a letter raising his prices.

Q. To what discount? A. 78, I believe.

Q. Did you tell Mr. Jonas that the mirror manufacturers, present at the hotel were going to do that? A. I don't recall telling him what they were going to do.

Q. Going to send a letter raising their prices. A. I don't recall telling him they were.

Q. Were the other mirror manufacturers mentioned, that is, those present at the hotel? A. Mr. Karp, I don't remember.

Q. Did you tell Mr. Jonas that Stroupe Mirror Company was going to send a letter? A. No, sir, I couldn't have told him that.

Q. Did you tell him anything about Stroupe Mirror Company? A. I told him I was interested in it.

Q. What did Hearn say? A. I think Mr. Hearn must have told me that Virginia Mirror Company was interested in it or at least he was.

Q. What was your purpose in giving that information to Mr. Jonas?

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A. To find out if he was interested and see what his reaction was.

Q. Did you tell Mr. Jonas that the mirror manufacturers represented at the Grove Park Inn on that occasion would raise their price to 78 per cent if Jonas would do likewise?

A. No, sir, I could not speak for the other mirror manufacturers.

Q. You told him that they were ready to do it? A. I don't know that I did tell him that. There were only three people present and each one spoke for himself.

*Robert Stroupe, for Government—Direct.*

Q. Let me see. You told him, did you; that Mr. Messer was going to raise his prices to 78 per cent. A. I did say that, yes, sir. That he said he was going to raise his price to 78 per cent.

Q. You heard Hearn say that he would go along? A. No, I can't say that I did.

Q. What did you hear Hearn say? A. I don't recall specifically what he said. I certainly acquainted—I am sure he acquainted Mr. Jonas with the situation and his personal feelings.

Q. What were the personal feelings that he expressed? A. That he was interested.

Q. Did you tell Mr. Jonas that Stroupe Mirror Company was interested? A. I told him that I was interested.

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Q. When you say "I", are you speaking for yourself personally or for the company. A. I am speaking for myself personally.

Q. When you say you are speaking for yourself personally, do you mean that you personally were interested in having Stroupe Mirror Company go along on the discount? A. I was personally interested in seeing a higher price in the mirror industry.

Q. And that would include Stroupe Mirror Company, would it? A. I can't speak for Stroupe Mirror Company. I don't have the authority.

Q. Would you be interested in seeing a higher price in the industry and exclude Stroupe Mirror Company from it? A. No, sir.

Q. What did Mr. Jonas say to all this? A. Mr. Jonas' reaction was very cold, and he wanted to know if I had talked to Mr. Gordon. I say me, he wanted to know if someone had talked to Mr. Gordon, and then asked to have Mr. Gordon call him, asked someone to relay a message to have Mr. Gordon call him.

Q. Had you talked with Mr. Gordon? A. Yes, sir, I had.

*Robert Stroupe, for Government—Direct.*

Q. What did Mr. Gordon say to you about the situation?

A. Let me relate the incident as I recall it.

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Q. Yes, sir. A. I don't know when it was. It could have been Monday night, it could have been Tuesday night, it could have been Wednesday night, I just don't know, but I was out in the corridor—there is a sort of an open area on this floor—and I was out in that area and was going somewhere, and I saw Mr. Gordon either going up the steps or coming down the steps. I asked Mr. Gordon if he had heard about Mr. Messer's statement that he had made. He laughed and said he had. I said, "Do you think that Mr. Messer is trying to shoot for too high a price?" He says, "It sounds like it to me." That was the end of the conversation. He was in a hurry and left.

Q. Did you talk to Mr. Gordon about the glass situation?

A. Yes, sir.

Q. What did he say to you about that? A. He told me it was not very good.

Q. Did you ask him what you ought to do? A. I asked him if he could get some glass in before the shortage became extremely critical.

Q. Did you ask him what you ought to do? A. Do about what, Mr. Karp?

Q. About the situation.

Mr. Holton: If your Honor please, that is no

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question. We object to it.

The Court: Objection sustained.

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By Mr. Karp:

Q. Did Mr. Gordon, in the course of that conversation about glass, mention prices? A. Not that I recall, sir. I

think I was the only one that mentioned the price to Mr. Gordon, or rather Mr. Messer's statement.

Q. Did he say to you that you ought to get your prices up? A. Not that I recall, no, sir.

Q. Did you talk with Mr. Gordon and his assistant, Mr. Ketchum? A. Yes, sir.

Q. Did Mr. Ketchum say that you ought to get your prices up? A. Not that I recall, Mr. Karp. It may have been mentioned but I don't recall it.

Q. You testified about this subject in another proceeding, have you not? A. Yes, sir.

Q. Did you testify to the truth on that occasion?

Mr. Rogers: I object to that, your Honor.

The Court: Yes, that is an unjustified inference,

Mr. Karp.

Mr. Karp: I withdraw that.

The Court: Don't repeat it.

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By Mr. Karp:

On that occasion, did you testify as to any conversations concerning prices with Mr. Gordon and Mr. Ketchum?

A. I may have, Mr. Karp. I don't recall exactly.

Q. Would you refresh your recollection and tell the Court and jury what that conversation was? A. I believe I talked, or I believe I stated that I had spoken to Mr. Ketchum about the glass shortage. I believe I made some comment to the effect that I didn't know what was going to happen to us if we were cut way back on glass because we were already losing money. It seems I recall some remark was made that you ought to get your prices up or something. I can't recall specifically now.

Q. Do you recall Mr. Gordon making that remark? A. No, sir, I don't. I think Mr. Ketchum made the remark.

Q. Mr. Gordon was present at the time? A. No, sir, I don't believe so. I tried to see Mr. Gordon on several occa-

*Robert Stroupe, for Government—Direct.*

sions to talk to him about this glass situation but I saw Mr. Ketchum more than I did Mr. Gordon.

Q. Do you know the business relationship between Mr. Gordon and Mr. Ketchum? A. I didn't know the relationship other than the fact that they were employed by the same firm and were in

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the same department.

Q. You knew that Mr. Gordon was the superior of Mr. Ketchum? A. I thought so, yes, sir. I think he was.

Q. After that call was made from Ken Hearn's room to Lenoir, did you see Mr. Gordon? A. Yes, sir, I did.

Q. How soon after that call to Lenoir did you see Mr. Gordon? A. It must have been possibly 20 or 30 minutes later. I went looking for him right away. But he was tied up on a telephone conversation, I was told.

Q. You wait to see him? A. Yes, sir.

Q. How long did you wait? A. Maybe 20 minutes, maybe 30 minutes.

Q. Did you see him? A. Yes, sir.

Q. Was Ken Hearn with you? A. I think Mr. Hearn was with me but I am not certain about that.

Q. What did you say to Mr. Gordon? A. I told him that we had talked to Mr. Jonas and that Mr. Jonas had asked us to have him call him.

Q. Did you tell Mr. Gordon what you talked to

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Mr. Jonas about? A. I am certain I did.

Q. Did you relate the conversation that you had with Mr. Jonas to Mr. Gordon? A. Yes, sir.

Q. What did Mr. Gordon then say? A. Mr. Gordon said he had already talked to Mr. Jonas.

Q. When did he talk to Mr. Jonas? A. Evidently he had just finished talking to him.

Q. Did he say whether he had called Mr. Jonas? A. No, he said Mr. Jonas had called him.



*Robert Stroupe, for Government—Direct.*

Q. Did he tell you what the conversation was that he had with Mr. Jonas? A. No, sir, he did not.

Q. He did not? A. No, sir.

Q. Did you say anything further to Mr. Gordon? A. Mr. Karp, I don't recall saying anything further to him about it.

Q. Did he say anything further to you? A. Not that I recall, sir.

Q. In your presence did Mr. Hearn say anything further to Mr. Gordon? A. No, sir, I don't recall it.

Q. Did Mr. Gordon say anything further to Mr. Hearn

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or to you? A. I don't recall it, sir, if he did.

Q. Where did you go after your little talk with Mr. Gordon? Did you go back to Mr. Hearn's room? A. I believe we did.

Q. Mr. Hearn went back with you? A. Yes, sir. I am sure. I didn't have a key to his room.

Q. Did you have a further telephone conversation with Mr. Jonas when you got back to Hearn's room? A. I do not remember, sir.

Q. Did you hear Mr. Hearn call Jonas? A. No, sir, I did not.

Q. How soon after you talked with Gordon did you get back to Hearn's room? A. I don't remember, Mr. Karp. I am not sure we went right back there or whether we stayed in Pittsburgh hospitality room. I believe we stayed there for a little while.

Q. Could it have been that Hearn left you after your talk with Mr. Gordon? A. It is entirely possible.

Q. Did you have any other telephone calls that day? A. Not that I specifically recall, Mr. Karp.

Q. Did you call your father?

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A. Yes, I called my father from Asheville. I don't know whether it was that day or not.

*Grady V. Stroupe, for Government—Direct.*

Q. Which room did you call your father from? A. I called my father from my own room.

Q. Did you inform your father of the telephone conversations and other conversations you had that night? A. Mr. Karp, I don't know that I did. The one specific telephone conversation I remember with my father I believe was on the night I got up there. I think I talked to him on another occasion.

Q. Addressing yourself to the evening of October 27, the night of October 27, did you call your father after you engaged in telephone conversations with Mr. Jonas and your conversation with Mr. Gordon? A. I may have, Mr. Karp. I don't specifically recall. I possibly did.

Q. Did you make any other telephone conversations that night? A. Not that I recall, sir.

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GRADY V. STROUPE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. Will you please state your name and address for the record? A. Grady V. Stroupe; address—I moved recently—910—I mean 610 Hillcrest Drive, High Point.

Q. Are you president of Stroupe Mirror Company? A. Yes, sir.

Q. Are you the father of Robert E. Stroupe? A. Yes, sir.

Q. Are you a member of the Mirror Manufacturers Association? A. Yes, sir.

Q. Are you an active member personally of that Association?

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**Grady V. Stroupe, for Government—Direct.**

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A. I have not been for the last couple of years, but I had been very active prior to that time.

Q. Did you attend the meeting at Grove Park, Asheville, North Carolina, in October 1954? A. No, sir, I did not. I had intended to attend, but we discovered at the last few days that the furniture market would be on at High Point and since Bob was golf chairman at the tournament, I decided I would stay and attend the furniture market.

Q. Did you attend the meeting at the Bluffs at Doughton Park on October 28, 1954? A. I attended a meeting at Doughton Park, the Bluffs, but I could not tell you the day, sir. I have searched my memory and anything that I thought might give me a clue, but I cannot tell you the day. I did attend a meeting there.

Q. Who called you concerning attendance at that meeting. A. That, sir, again I can't recall. My recollection is that the message was given to me by a third party, someone had called someone else and they told me, but I can't tell you. I have tried every way I know to try to reconstruct it and find out how I got the message, but I have not been able to.

Q. Did you receive the message by telephone call from

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someone at the Asheville, North Carolina, meeting? A. To the best of my recollection, I did not receive it from Asheville.

Q. Were you told as to the arrangements that were made for your attendance at the Bluffs? A. I was told that I was wanted to attend, to the best of my recollection—that I was wanted to attend—with Mr. Jonas and Mr. Messer. I don't know whether I got the message at the same time that Mr. Buchan was going to attend, or if it was pre-arranged that I go by and go with him, or if I went by because it was on the way. But I did attend, and I went up to Mr. Buchan's car from North Wilkesboro.

*Grady V. Stroupe, for Government—Direct.*

Q. Did you have lunch at the Bluffs Restaurant? A. Yes, sir.

Q. Who was there? A. Mr. Buchan, and Mr. Jonas, Mr. Messer, and there was one other party that I could not recall who it was but I have been told recently it was Mr. John Nunn, a grandson of Mr. Messer.

Q. He was a young boy? A. Yes, sir.

Q. About 17 years old? A. I couldn't tell you, sir. Somewhere I would have thought around 20 at that time.

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Q. After the Bluffs, where did you go? After the Bluffs Restaurant, where did you go? A. We went to what is called the Lodge. I don't know the name other than the Lodge.

Q. Was that a bedroom you went to? A. Yes, sir.

Q. Who registered for the room? A. If anyone registered I do not recall it, sir.

Q. Who was in the room at the Lodge? A. Mr. Jonas and Mr. Messer, Mr. Buchan and myself, and I think Mr. Nunn was in. I am not positive, but I think he was there.

Q. Do you or do you not recall Nunn being in that particular bedroom? A. My recollection is that he was, yes, sir.

Q. What did you discuss in that bedroom at the Lodge at Doughton Park? A. I can't tell you in chronological order, but to the best of my recollection the first thing that was discussed was Mr. Messer told us of his conversation and what he had said at Asheville, that he was going to send out a letter lowering the discount to 78, by which the prices would be raised. About the time he made that statement, Mr. Jonas and Mr. Messer got in a hassle. I never was sure what it was about, but there was some very heated words.

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Mr. Messer got very red in the face. Frankly, I thought he was going to have a stroke. During that time we were all talking at one time.



*Grady V. Stroupe, for Government—Direct.*

Q. As a matter of fact, was that letter mentioned first or were prices discussed first? A. I couldn't tell you chronologically. The letter was mentioned and prices were discussed.

Q. What discounts were mentioned in the discussion of prices? A. To the best of my recollection, there were three discounts mentioned. 79, 78 and 77. We were told by Mr. Messer that it had to be 78.

Q. What was said concerning 79 per cent off? A. I can't remember specifically, sir.

Q. Did anyone say that would have been too low a price? A. I think the mention of it was ignored. I don't recall, sir.

Q. What was said concerning 77 per cent off? A. I think it was remarked that it was too high.

Q. Too high at the time? A. At the time, yes, sir.

Q. In view of the previously prevailing prices? A. Yes, sir.

Q. In other words, they say it was too high because it would have been too hard an impact on the customers or

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what was said concerning it? A. As well as I recall, Mr. Karp—I should qualify that—maybe I said that from an economic standpoint it was about right, but from a raise from the current prices it was too much.

Q. Then what was said after the 77 per cent was discussed? A. When Mr. Messer said that if he sent out a letter we would all have to send out a letter, I told him or told the crowd that wasn't my understanding of it, that my understanding was that he was going to send out a letter that he was going to raise his prices. I didn't want any part of all of us sending out a letter at one time and didn't think it was right.

Q. Why didn't you think it was right? A. Because I thought if he wanted to raise his prices it was an individual matter. If after we studied the situation over, and we wanted to raise our prices that was another matter. It was an individual proposition.



*Grady V. Stroupe, for Government—Direct.*

Q. Had you not already considered the matter and considered 79 per cent, 77 per cent and 78 per cent? A. Only in conversation, sir, at that time.

Q. Had you not all considered that 78 per cent was right? A. In conversation, yes, sir.

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Q. Now, then, why did you think it not desirable to send the letter at the same time? A. Mr. Karp, I think each one had his economic situation to take into consideration himself.

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Q. Was it that, or a question of appearances if a letter was sent at the same time? A. I will be frank with you. I thought of the appearances, too, but I did think of the economic situation.

Q. When you say you thought of appearances, what appearances are you referring to? A. I am referring that it would look like we had gotten together and fixed prices.

Q. So you thought it would be better if you were to send the letter a little later than the others? A. Not necessarily me, sir.

Q. Anyone? A. Anyone, yes, sir.

Q. What did Mr. Messer say to that? A. As near as I can recall, he said he didn't care. In other words, he didn't give a darn what we did; he was going to raise his prices.

Q. About the letter, what did he say? Did he still insist on everybody sending letters at the same time? A. I don't think so. I think that he just figured he had spoken and that there was no other argument to it.

Q. Did Mr. Jonas say anything about sending letters at the same time? A. Mr. Jonas told me, when I made some remarks about it, that Mr. Messer was calling the rules of

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the game and we would have to play by them.

Q. So you got through with that meeting at the lodge

*Grady V. Stroupe, for Government—Direct.*

bedroom at what time? A. I couldn't tell you, sir. Some-time in the middle or late middle of the afternoon, maybe three or four o'clock. I have no idea to be exact.

Q. Did you drive back to Thomasville? A. I went down to North Wilkesboro with Mr. Buchan, picked up my car and drove back to Thomasville.

Q. Did you see Mr. Gardner when you got back to Wilkesboro? A. Yes, sir.

Q. Did you tell him what happened at the meeting at the Bluffs? A. No, sir, but Mr. Buchan did.

Q. In your presence? A. In my presence.

Q. What did Mr. Buchan say to Mr. Gardner in your presence? A. He told Mr. Gardner that he was reporting exactly what happened and Mr. Gardner became very—he chewed out Mr. Buchan, to be frank with you. He said he sent him up there as an observer and apparently he had done some talking. His talking was that he would recommend to Mr. Gardner that he go to 78.

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Q. What did Mr. Gardner say? Did Mr. Gardner say he would go along? A. He didn't while I was there because it is pretty embarrassing to be in the presence of an employee who was getting chewed out and I excused myself and left. But at the time I left he didn't say what he was going to do. I didn't stay but a few minutes.

Q. Are you sure about Mr. Buchan having gotten chewed out by Mr. Gardner? A. I am positive about that, sir.

Q. You are? A. Yes, sir; that I am.

Q. You are aware of the letter that was sent out by Carolina? A. I have seen it; yes, sir.

Q. Did you tell Mr. Gardner that mention was made of a letter going out immediately? A. I didn't tell Mr. Gardner. Mr. Buchan did.

Q. In your presence? A. In my presence; yes, sir.

*Cross examination by Mr. Morison:*

(For Galax Mirror Company, Inc., Mount Airy Mirror Company, and J. A. Messer, Sr.):

Q. Mr. Stroupe, I believe you testified that you first came up to the Bluffs and went to lunch at a little restaurant. A. Yes, sir.

Q. And there you met these other people and this fellow who got in the fight, Mr. Messer, was he there? A. Yes, sir.

Q. Was that a friendly gathering? Did you get along all right? A. Yes, sir.

Q. With that as a standard of comparison, I would like to ask you, when you left the Bluffs for good, where was the last place of contact where all the people were together? A. Where the cars were parked in front as we were leaving.

Q. Was that a parking area there? A. It is an area in which cars can be parked. It is a

street which is wide enough so that they can be parked, as I recall it.

Q. Did the remark that you adverted to, John Messer said, "I don't give a damn what the rest of you are going to do; I am going to 78," did that occur in that place? A. I think it did, sir. It either occurred just as we were leaving the room or at that place.

—Q. The reason I am trying to place that, Mr. Stroupe, is this: Was that departure of the parties there from the parking lot, in comparison with the friendliness of the luncheon, a different attitude among those people? A. I would think it was not as friendly. I felt it was not nearly as friendly as it was at the luncheon.

Mr. Morison: That is all, your Honor.

Mr. Karp: That is all.

A. G. Jonas, for Government—Direct.

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A. G. JONAS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

*Direct examination by Mr. Karp:*

Q. Will you please state your name and address for the Court and jury? A. A. G. Jonas, Lenoir, North Carolina.

Q. In what business are you engaged, Mr. Jonas? A. Manufacture of mirrors.

Q. What is the name of your company? A. Lenoir Mirror Company.

Q. Where is that located? A. Lenoir, North Carolina.

Q. Is your home in Lenoir, North Carolina? A. Yes, sir.

Q. Mr. Jonas, are you presently or have you ever been a member of the Mirror Manufacturers Association? A. I am not presently a member. I have been.

Q. When were you a member? A. Prior to 1949.

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The Court: May I interrupt? What is your status with the company?

The Witness: President and general manager.

By Mr. Karp:

Q. During the years 1953 and 1954, Mr. Jonas, were you contacted by any members or officials of the Mirror Manufacturers Association for the purpose of your joining that association? A. Yes, sir, I was.

Q. By whom were you contacted, Mr. Jonas? A. I don't recall. It was by letter.

Q. I show you these papers and ask you whether they refresh your recollection as to the dates of contact and by whom? A. Yes, sir.

Q. You may answer. A. Yes, sir.

Q. By whom were you contacted and when? A. Contacted by Milton S. Binswanger on March 2, 1953.

*A. G. Jonas, for Government—Direct.*

Q. Who is Binswanger, please? A. Signed "Chairman, Membership Committee, Mirror Manufacturers Association."

Q. By whom else, and when? A. September 16, 1954, by Kenneth H. Hearn.

Q. Who is Kenneth H. Hearn?

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A. Chairman of the MMA membership committee.

Q. Do you know Kenneth H. Hearn? A. Yes, sir.

Q. Was he at that time vice president of the Virginia Mirror Manufacturing Company? A. I do not know what office he held.

Q. Was he with that company at that time? A. Yes.

Q. Is he the son-in-law of Mr. Schottland, the president of that company? A. It is my understanding he is.

Q. Did you join the Association? A. No, sir.

Q. Have you since 1950 attended any meetings of the Mirror Manufacturers Association? A. No, sir.

Q. Did you attend the meeting of the Mirror Manufacturers Association held in October 1954? A. No, sir.

Q. Did you have any relationship with that Association since the date of your resignation in 1949? A. Not to my knowledge.

Q. Did you on October 26 receive a call from anyone at the Mirror Manufacturers Association meeting? A. I don't recall the exact date.

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Q. Did you receive a call from Mr. Levell while he was at the Mirror Manufacturers Association meeting? A. Yes, sir.

The Court: From whom was that?

Mr. Karp: Ketchum. I mean Levell. I am sorry.

By Mr. Karp:

Q. Who is Mr. Levell? A. He is sales representative for Pittsburgh Plate.



*A. G. Jonas, for Government—Direct.*

Q. What did Mr. Levell say to you in that call? A. The purpose of his call was that I had an engagement—golf engagement with Mr. Gordon and Mr. Ketchum—and he was wanting to know when I would arrive for the previous engagement we made.

Q. Where was that golf match to take place? A. Biltmore Forest Country Club, Asheville.

Q. That is in Asheville, North Carolina? A. Yes, sir.

Q. Did you make arrangements for that golf game in that conversation with Mr. Levell? A. As I recall my conversation I made arrangements for the golf game prior to that, but his telephone conversation was to verify to see when I would be there.

Q. Was the golf game held thereafter? A. Yes, sir.

Q. Who did you play the golf with at that club?

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A. I took a friend of mine from my home town, and he joined me with Mr. Gordon and Mr. Ketchum, the four of us.

Q. After the golf game did you have lunch? A. No, we had lunch before the golf game.

Q. Did you have any discussion on the occasion of that golf game? A. Naturally there was some discussion.

Q. What did you talk about? A. My main interest, the subject of my topic was in regards to the Cumberland plant.

Q. Would you speak up so that the Court and jury can hear you, please, Mr. Jonas? A. My sole purpose and topic in this meeting or engagement that Mr. Gordon and Mr. Ketchum and I had was in regards to the Cumberland plant at Maryland that was being put up by Pittsburgh Plate Glass Company. Do you want to know about that?

Q. Yes, tell the Court briefly what the situation was. A. I have a financial interest in a transportation company there in Lenoir, and we did not have rights under ICC to bring glass back from Cumberland, Maryland, and I asked Mr. Gordon if they would give us assistance in filing

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*A. G. Jonas, for Government—Direct.*

application with the Interstate Commerce Commission to extend our rights into Cumberland, Maryland, if it would be necessary for us to get all of our glass out of Cumberland.

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Q. Is that the glass you are talking about, glass produced by a new plant of the Pittsburgh Plate Glass Company? A. Yes, sir.

Q. What did Mr. Gordon say about giving you some help on that? A. He said they would lend all the support they possibly could with their traffic department to help file an application.

Q. Did you talk about anything else? A. We talked about generalities.

Q. Did you talk about the mirror industry? A. Naturally we would. There was not anything in particular that we talked about.

Q. Did you talk about glass?

Mr. Rogers: Your Honor, I think he ought not to lead the witness quite as much as he is doing. This is a Government witness.

The Court: I do not see anything objectionable so far.

The Witness: I don't recall anything in particular that we talked about glass. It was generally rumored-around that there was going to be a shortage of glass, but I was not too concerned about that at the time. My main concern was in regards in the future whether or not we would be able to get our glass

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out of the Cumberland plant.

Q. Was there any discussion about prices to be charged for mirrors? A. No, sir. There was not any discussion

*A. G. Jonas, for Government—Direct.*

other than the fact that I told him that we were selling at a ridiculously low price.

Q. What did Mr. Gordon say about it? A. I don't recall exactly what he said. When you go back that long ago you can't remember every little detail that would come out. He was aware of the price situation that existed.

Q. What did he say about the price situation if anything? A. I don't recall him saying anything. As a matter of fact, I was not much interested in that part of it anyway.

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Q. Did you receive any telephone call from anyone at the Mirror Manufacturers Association meeting at the Grove Park Inn at Asheville, North Carolina, on October 27, 1954?

A. I received a telephone call from Asheville. I don't know whether it was from the Grove Park Inn or where.

Q. I show you Government's Exhibit No. 69 and ask if that refreshes your recollection as to the receipt of a telephone call? A. Yes, sir.

Q. Can you tell the Court and jury who called you on October 27, 1954? A. Ken Hearn. Mr. Hearn.

Q. Had you talked with Mr. Hearn on the telephone before?

Mr. Joyce: If your Honor please—

Mr. Karp: On any occasion?

Mr. Joyce: That question, when I started to object, was an open question. It said "Have you talked with Mr. Hearn on the telephone before?" Our objection to it was that it was too broad unless he specifies what he is talking about. He said at any time before.

By Mr. Karp:

Q. Did the person calling you say who he was? A. Yes, sir.

Q. What did he say?

A. He just told me, "This is Ken Hearn."

Q. Had you talked with him on the telephone before on any occasion, and did you recognize his voice? A. I recognized his voice. I couldn't say perhaps I talked with him before.

Q. How long did you talk with Ken Hearn on the telephone on that occasion? A. It seemed like to me it was a very lengthy time.

Q. What time was it when he called you, if you recall? A. As I recall, it was late in the evening. It was around 9:30 or 10:00 o'clock.

Q. What did Kenneth Hearn say to you and what did you say to him in the course of that telephone conversation? A. He informed me that he was no longer connected with Virginia Mirror Company, which I was surprised to learn, and said that he was up there at the meeting.

He says, "You know you fellows have been having a price war going on." He says, more or less acting as a missionary for the industry, he wanted "to see if it was possible for you fellows to get your prices raised." He said that the general feeling was amongst those who were present at the meeting that all were in favor of raising the prices.

Q. Did he say who was present at the MMA meeting, and who were in favor of raising prices? A. Of course, he himself. I assume that was Virginia

Mirror. Bob Stroupe, Stroupe Mirror Company. Ralph Buchan of Carolina Mirror Corporation. Mr. Messer of the Galax Mirror and Mount Airy Mirror, and Mr. Weaver of Weaver Mirror Company.

Q. What did he say with respect to those gentlemen? A. Well, he said that it had been just generally rumored around that they were willing to raise their prices. If I would come along, that would be all that there was to it.

*A. G. Jonas, for Government—Direct.*

Q. Did he say why he wanted you to come along? A. Well, just generally, if you didn't come along, prices wouldn't be raised. I was the stumbling block. There would not be any increase if I didn't agree to do so.

Q. What did you say to Mr. Hearn? A. Well, I was amazed that there was conversation that Mr. Messer was willing to raise prices. I told him I didn't know whether I could believe that or not. I told him that I wouldn't commit myself one way or another, whether I would or would not raise my prices. Then——

Q. Did anyone— A. Excuse me.

Q. Go right ahead. I thought you were through. A. You want to know the text of the whole conversation?

Q. Yes, sir, please. A. Then Bob Stroupe was in his room and he talked to me over the phone. Bob seemed to be very excited about it.

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It looked like everything was going all right and now was the time to do it in view of the shortage coming up. Ralph Buchan also talked to me, all along about the same lines, the three of them.

He just kept on asking me if I would go along. I told him I just couldn't make up my mind in this telephone conversation. I would like to give some thought and consideration. I wasn't sure whether the boys were trying to pull something on me or not, whether it was true that this was going on.

So I asked him if he would have Mr. Gordon to call me because I felt like Mr. Gordon and I are very close personal friends and if there was any truth in this matter, he would tell me so.

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Q. Did Mr. Hearn indicate whether or not he would tell Mr. Gordon about your request? A. Yes, he said he would get in touch with him and have him call me.

Q. Was there anything else said about any future calls? A. No, not at that time there wasn't.

Q. Did Mr. Gordon call you? A. Yes, sir.



*A. G. Jonas, for Government—Direct.*

Q. How soon after your conversation with Mr. Hearn did Mr. Gordon call you? A. I don't know exactly how soon. I would say it was just a matter of a few minutes that Mr. Gordon called me.

Q. What was the conversation that Mr. Gordon had with you on the telephone? A. It was mostly my conversation with Mr. Gordon. I was just telling him what Mr. Hearn and Mr. Stroupe and Mr. Buchan had called me about. I asked him, though, I said, "Bill, is there anything to this? Have you heard anything about it?" He said, "Well, I can say I have. In some of the rooms I heard the fellows saying that they would like to get their prices increased." That was about the whole extent of the conversation with Mr. Gordon.

I felt like the relationship I had with him, not

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denying the other three fellows that talked with me that Mr. Gordon would tell me whether it was true or not true that there had been some discussion going along.

Q. You are talking about your relationship with Mr. Gordon. Will you tell the Court and jury whether or not the Pittsburgh Plate Glass Company was your supplier of plate glass? A. Yes, they are the supplier of our plate glass.

Q. Did you indicate to Mr. Gordon what your attitude was with respect to a price increase? A. As I recall, I told Mr. Gordon that I was leaning the other way. I was not much in favor of raising my prices at the time.

Q. What did Mr. Gordon say? A. He said, "I don't have anything to do with what you do about your business. That is entirely up to you." He wasn't trying to tell me what I should do or should not do. I just told him that I was leaning that way at the moment. Of course, I still had not had much time to think it over. It was all right there in the course of a 30-minute conversation.

Q. Did Mr. Gordon indicate to you that you ought or ought not to raise prices? A. No, sir, he didn't make any indication of whether I ought or ought not. Well, he might—

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Q. What did he do? A. He might have said, just like most anybody would say, you ought to be getting more for the product than we were getting for.

Q. He said that? A. Well, I—

Q. How did your telephone conversation end on that occasion, Mr. Gordon? A. I had told Hearn that I would get back in touch with him after talking with Mr. Gordon. So I told Mr. Gordon to have Hearn call me again.

Q. Did Mr. Hearn call you again? A. Yes, sir.

Q. How soon after your conversation with Mr. Gordon did Mr. Hearn call you? A. I would say it was within a reasonably short length of time. Three or four minutes or five.

Q. What was the conversation you had with Mr. Hearn on that occasion? A. He asked if I would be interested or would consider meeting with a group of them and go into this matter further. I told him I would think it over and let him know in the morning.

Q. Did he indicate what group he wanted you to meet with?

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A. I don't recall that he did.

Q. Did he give you any indication of who the group was that you were to meet with? A. Not at that time, I don't think.

Q. Did you call Mr. Hearn the next day? A. Yes, sir.

Q. What time of the day was it? A. It was before I left my home to go to work.

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Mr. Karp: We have had marked for identification Government's Exhibit No. 88, which is a Southern Bell Telephone and Telegraph Company bill to A. G. Jonas, Jr., November 26, 1954.

Mr. Rogers: Did you say November 26, 1954?

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**A. G. Jonas, for Government—Direct.**

**Mr. Karp:** Yes, November 26, 1954.

**Mr. Rogers:** The bill, excuse me.

**Mr. Karp:** The bill; yes, sir.

**By Mr. Karp:**

**Q.** I show you this, and ask you, Mr. Jonas, whether you can identify it as to what it is and where it came from? **A.** This is my personal telephone bill.

**Mr. Karp:** I offer it in evidence.

Government's Exhibit No. 88, last above referred to, admitted in evidence.

**Mr. Karp:** I have marked for identification as Exhibit No. 89 what purports to be a telephone bill, Southern Bell Telephone and Telegraph Company, dated November 26, 1954, to Lenoir Mirror Company.

**By Mr. Karp:**

**Q.** I show you this exhibit and ask you whether you can identify it? **A.** It is the Lenoir Mirror Company's bill.

**Q.** Does this have an attachment as to long distance

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telephone calls between October 26, 1954 and November 24, 1954? **A.** Yes, sir.

**Mr. Karp:** I offer it in evidence.

Government's Exhibit No. 89, last above referred to, admitted in evidence.

**By Mr. Karp:**

**Q.** I show you this bill, Exhibit No. 89, and ask whether it refreshes your recollection as to any telephone call made to Asheville on October 28, 1954? **A.** Yes, sir.

**Q.** Who did you call at Asheville on that day? **A.** I called Ken Hearn.

*A. G. Jonas, for Government—Direct.*

Q. What time did you call Ken Hearn on that day?

A. It was early in the morning. I don't know exactly what time it was. I would say around eight o'clock.

Q. What was the conversation you had with Ken Hearn on that occasion? A. I told him I still had not made up my mind in regard to going along and raise my prices, but I would agree to meet with a group of them. But I would not give him a definite commitment as to what my action would be.

Q. Was anything said about where or when you should meet with the group of mirror manufacturers?

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A. Yes, sir.

Q. Where were you to meet? A. Meet at the Bluffs on the Blue Ridge Parkway.

Q. Did you go to the Bluffs on that day, October 28, 1954? A. Yes, sir.

Q. What time did you get to the Bluffs? A. As I recall, we had a luncheon engagement set up for one o'clock. I was late leaving my office and didn't think I would be there in time, so I stopped enroute at Blowing Rock and ate a sandwich. I didn't leave my office until around quarter to twelve.

I have a condition where I can't let my stomach go a long length of time without eating, so I stopped and ate a sandwich there. It so happened I got to the Bluffs, I was running a little bit late, but along about the same time as the rest of them.

Q. What time was that, sir? A. That was right at one o'clock.

Q. Where at the Bluffs did you meet the others? A. The restaurant there on the parkway.

Q. After lunch did you proceed anywhere else? Pardon me. Strike that. Who was at the restaurant during that time? A. Mr. Messer.

Q. Mr. Messer who? Junior or senior? A. Mr. John Messer, Sr. Mr. Ralph Buchan. Mr. Grady Stroupe. There was a grandson of Mr. Messer. I don't recall his name.

Q. How old would you observe that grandson to be? A. I would say he was between 16 and 18 years of age. He was old enough to drive a car.

Q. In what capacity did you understand young Nunn to be there? A. Who is young Nunn?

Q. What was the name of that grandson of Messer? A. I do not know his name, sir. I don't recall his name.

Q. In what capacity did you understand Messer's grandson to be at the Bluffs? A. He drove him over there. That is what I understood Mr. Messer to say; that the grandson was driving for him.

Q. Was anybody else there? A. Not to my knowledge.

Q. Did you proceed to any other place after the luncheon at the Bluffs? A. Yes, sir. We went to the lodge, which is adjacent or across the highway from where the restaurant is.

Q. Where in the lodge did you meet? A. We met in one of the bedrooms.

Q. Did you have a discussion there? A. Yes, sir.

Q. Who was in the bedroom? A. The five of us.

Q. What was said in that discussion? A. It would be hard to repeat everything that was said. It seemed like Mr. Messer had a change of heart and wanted to raise prices and we kept on discussing it and discussing it and discussing it. It was what you might call a round-table discussion.

Q. Did John Messer and you get into a hassle? A. I don't know whether you call it a hassle or wrangle or what, but we had a few words.



*A. G. Jonas, for Government—Direct.*

Q. A few gentlemanly words? A. It was no fist fight or anything like that. It was just words.

Q. Was anything said about any discussions which were had by mirror manufacturers at the Asheville MMA meeting? A. I just assumed that everything we were there for had come out of the Asheville meeting and it was all hinging on me.

Mr. Holton: If your Honor please, we object to his assumptions.

Mr. Karp: Yes, just answer the question.

The Court: The objection is overruled.

Mr. Karp: Will you read the question?

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(The last question was read by the reporter.)

By Mr. Karp:

Q. Was anything said about any particular price to be charged? A. We kicked around 79 percent, 78 percent.

Q. Was anything said to you when you first came into that meeting or at any time about whether or not you would go along with any price increase? A. Before I came into that meeting?

Q. No. When you came into the bedroom? A. Would you mind restating your question?

Q. Did anyone at that meeting say anything to you about what had transpired at Asheville? A. Well, I don't recall exactly what was said about what transpired at Asheville. We just went over the telephone conversations that I had had the previous evening. It was just a general feeling that there would be an increase of prices and it all hinged on me, if I would come along and the whole industry would, I mean our area would.

It was a matter for me. It looked like to me that if I didn't agree to raise my prices, the prices never would be raised.

*A. G. Jonas, for Government—Direct.*

Q. Did you say in the course of that conversation whether or not you would go along with the price increase?

A. You mean there at the Bluffs?

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Q. Yes. A. Yes. After we discussed the matter and everything, I had their assurance. After going over some of the back-history of the way things had been going during this price war, I told them if they wanted to assure me they would stick by it, I would go ahead and raise my prices.

Q. Did you discuss any particular discounts? A. Yes. We discussed a price of 79 and 78 percent. As a matter of fact, we might have even discussed 77 percent.

Q. When you say "percent," do you refer to any particular list? A. The mirror list.

Q. You mean the 1950 mirror list? A. Yes, sir.

Q. How did the conversations concerning percentages terminate? A. Well, after so long a time we just agreed that the 78 percent was a fair price and we would go along on that basis.

Q. Was anything said as to whether or not that 78 percent discount had been previously discussed at the Asheville meeting? A. I took it for granted that it had.

Q. What made you take it for granted? A. Because they had already talked about the thing

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before they ever got hold of me.

Q. Was that figure mentioned in the course of your conversations with Ken Hearn or Gordon? A. No doubt it was with Ken Hearn. My conversation with Mr. Gordon was not relative to what the price might be. I just wanted to find out from him if he had heard any talk over there.

Q. In other words, your talk with Mr. Gordon concerned the question of raising a price, but not a particular discount? A. It was not a question of raising the price.

*A. G. Jonas, for Government—Direct.*

I wanted to know from him if this was authentic what they were calling me about.

Q. Did he give you any assurances whether it was authentic? A. He told me he had heard some general discussion around the different rooms that we wanted to increase the prices.

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The Court: One of these witnesses said that in talks over the phone you were suspicious about this suggestion from Asheville because they told you that Mr. Messer had initiated the thing, and you were distrustful of it for that reason. Was that the reason you called Mr. Gordon to find out if it was genuine?

The Witness: I would say yes, sir, because I could not put too much faith in Mr. Messer. It didn't sound like him wanting to raise prices.

By Mr. Karp:

Q. Was anything said about how a price increase should be effectuated? A. After kicking it around and everything, and letting Mr. Messer dictate, we had to follow his agreement that we would all write letters on October 29, changing our discount.

Q. Who first suggested the writing of a letter and was anything said as to why a letter should be written? A. I suppose that Mr. Messer is the one who suggested it, because he said if we didn't write the letters October 29, then he wouldn't raise his prices. We had to do it then or not at all.

Q. Did he say why he wanted it done that way? A. I don't know, just arrogant and belligerent about it,

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wanting it his way, I reckon.

Q. Did he say why he wanted it that way? A. I don't recall him saying exactly why. I thought I would just give

*A. G. Jonas, for Government—Direct.*

in to him then if that is the way he wanted it. After I agreed to raise my prices, I was figuring one day wouldn't make any difference.

Q. Was that the way it was left? A. That is the way it was left in my understanding.

Q. Was anything said as to calling any other mirror manufacturers who were not present at that meeting at the Lodge? A. Well, I think there was, because most of them had been accounted for before that meeting was held at the Lodge.

Q. Who were accounted for before the meeting was held at the Lodge? A. I assume all that were in Asheville.

Mr. Lee: If your Honor please, I move to strike the last two answers, that "I assume" that they would be called and somebody was going to call, and I just assumed it, and I suppose it happened at Asheville. That is a mere assumption and surmise. I submit it is immaterial and irrelevant and should be stricken.

The Court: If they are immaterial and irrelevant, they don't hurt you. I take the witness' answer to

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mean that there was no arrangement or any statement made there about calling any other person.

By Mr. Karp:

Q. Was there any arrangement made about calling other persons? A. All I can say, I can speak for myself, that I agreed to call. There again if the Court permits the word assume, I imagine some of the rest assumed the responsibility for calling some of them.

Q. Do you mean that there was something said about individuals at the Lodge assuming responsibility for calling other mirror manufacturers? A. I say I assume there

*A. G. Jonas, for Government—Direct.*

were because I remember distinctly that I told them that I would take care of some of them.

Q. Who did you tell them you would take care of? A. O. W. Slane Glass Company, Statesville, North Carolina, Union Mirror Company, Lenoir, North Carolina, and that I would report the outcome of the meeting to Pittsburgh Plate Glass Company.

Q. When did you get home after the Lodge meeting? A. I don't recall exactly what time. It was late in the evening. I would say around six o'clock or thereabouts.

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Q. Did you call any mirror manufacturer when you got home that day? A. I called Mr. Gardner that evening.

Q. I show you Exhibit 88, and I ask you whether there is recorded any listing of any phone call there which represents your call to Mr. Gardner? A. There is one here to Wilkesboro.

Q. Was that the call to Mr. Gardner? A. Yes, sir.

Q. What was your discussion with Mr. Gardner on that phone conversation? A. Mr. Buchan was there at the meeting and he said he couldn't exactly speak for Carolina Mirror but he felt like they would go along. I wanted to get the assurance from Mr. Gardner himself if he would be agreeable to this price as we outlined at The Bluffs.

Q. Was there any special reason why you should call Mr. Gardner? A. Carolina Mirror and ourselves are very close in the vicinity of our manufacturing and therefore are very competitive one to each other.

Q. What did Mr. Gardner say to you? A. As I recall, he said he would go along with us on the thing.

Q. Did you tell Mr. Gardner about the statement by

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Mr. Messer concerning the letter to which you referred? A. Yes, I made that statement.



*A. G. Jonas, for Government—Direct.*

Q. What did you say to Mr. Gardner concerning that?

A. I told him we were going along and sending the letter out October 29. I think the biggest part of my whole conversation when I called Mr. Gardner and Slane in Statesville was to tell them about the wrangle that Messer and I got in. I got as much kick out of that as anything.

Q. Did Mr. Gardner say he would write the letter or whether he had written the letter or did he say anything about a letter? A. I don't recall whether he said he would or not. I had reasonable assurance from our conversation that he was going to write the letter, or I certainly would not have written mine.

Q. Did Mr. Gardner say anything to you concerning conversations with other persons who were at that meeting, that is, conversations prior to your call? A. I don't recall of any.

Q. Did he say whether or not Buchan had returned from the meeting? A. Yes, I think he said that Ralph had just left his house.

Q. Did you make any calls to Pittsburgh Plate Glass Company?

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A. I reported it to the general office.

Mr. Karp: I have marked for identification as Exhibit No. 89 what appears to be a telephone bill, Southern Bell Telephone & Telegraph Company, to Lenoir Mirror Company, November 26, 1954. I am sorry. Strike that. It has already been admitted.

By Mr. Karp:

Q. I show you Exhibit No. 89, and ask you whether the attachment of toll service calls refresh your recollection as to any calls you made to Pittsburgh? A. Yes, sir.

Q. When did you call Pittsburgh? A. I called them on October 29.

*A. G. Jonas, for Government—Direct.*

Q. Who did you call at Pittsburgh? A. I called Sam Prichard and told him about our gathering up on The Bluffs and what we agreed on the price and asked him if he would convey my remarks to Mr. Gordon.

Q. Did you ask to speak to Mr. Gordon? A. I think I did. As I recall, I did, but I am not positive.

Q. What did Mr. Prichard say? A. He said, "Well, Buddy, I will tell him what you told me."

Q. Who is Mr. Prichard? A. He is assistant manager, plate glass sales.

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Q. Did you tell Mr. Prichard anything about Mr. Messer's insistence upon a letter? A. No doubt I did. I gave him the highlights of the whole thing.

Q. Do you recall what day October 29 was? What day of the week? A. It was on a Friday.

Q. Did you call Pittsburgh Plate Glass Company after October 29? A. Yes, sir.

Q. What day was that? A. November first.

Q. What day of the week was that? A. Monday.

Q. Who did you speak to there? A. Again I spoke with Mr. Prichard.

Q. What was the subject of that telephone conversation? A. I gave him a purchase order and asked him if anything had ever been done relative to our conversation of Friday.

Q. What did Mr. Prichard say to that? A. As I recall, his comment was that it has been reported, "What you told me."

Q. Did he say whether or not the matter had been taken

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care of? A. Whenever he told he had reported the matter, I felt the matter would be taken care of. That is as far as I was involved in it.

Q. Did you write a letter to the furniture manufacturers trade concerning a new price to be charged to furniture manufacturers at that time? A. Yes, sir.

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*A. G. Jonas, for Government—Direct.*

Mr. Karp: I have marked for identification as Exhibit No. 90 a letter from Lenoir Mirror Company to Hickory Manufacturing Company, dated October 29, 1954.

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By Mr. Karp:

Q. I show you Exhibit No. 90, marked for identification, Mr. Jonas, and ask you whether you can identify it.

A. Yes, sir.

Q. What is it? A. That is showing the price of what we were going to charge for plate glass mirrors.

Mr. Karp: I offer it in evidence.

Government's Exhibit No. 90, last above referred to, admitted in evidence.

Mr. Karp: I should like to read this to the Grand Jury. To the jury; excuse me.

"October 29, 1954, Hickory Manufacturing Company, Hickory, North Carolina.

"Gentlemen:

"Effective as of November 1st, we are pleased to quote a discount of 78 percent off the April 1, 1950 mirror list on plain plate glass mirrors. Straight-line beveling will be charged at one cent per lineal inch, and polished edges at one-half cent per lineal inch.

"All orders now on file with us will be furnished on the old basis.

"Very truly yours,

"Lenoir Mirror Company.

"A. G. Jonas."

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By Mr. Karp:

Q. Mr. Jonas, this letter dated October 29, 1954, is addressed to Hickory Manufacturing Company, is that correct? A. Yes, sir.

*A. G. Jonas, for Government—Direct.*

Q. Was this the only letter you sent to the furniture manufacturers? A. No, sir.

Q. On that day? A. No, sir. We sent others.

Q. Did you send an identical letter to any other furniture manufacturers? A. We sent an identical letter to all of our furniture manufacturing customers.

Mr. Karp: Thank you. That is all.

The Court: What have you with regard to any statements made by Mr. Jonas prior to this trial? I don't assume that you are examining from memory.

Mr. Karp: I have notes. There are Grand Jury transcripts which I have analyzed. There are notes which I have, which are my own working papers, as to any interviews with witnesses called to the Grand Jury pursuant to subpoena. That is the extent of any papers that I have on the subject called for by counsel for defendants.

AND THEREUPON the following Proceedings were had in the absence of the jury:

The Court: Gentlemen, when we adjourned on Friday, Mr. Gilmer had made a motion that counsel for the defendants be allowed to examine—or rather, that counsel for the government be required to produce, to use the language of the statute more accurately, any statements which the witness, Mr. Jonas, had made to counsel for the government prior to the institution of this case.

Mr. Karp handed over to me two folders here containing various notes which he had made and reduced to typewritten form of what he understood would be the testimony of Mr. Jonas. I do not think

### *Colloquy.*

that either one of these statements come within the purview of the statute.

They are not statements made by the witness or signed or otherwise adopted or approved by him. They are not stenographic, mechanical, electrical or other transcriptions which stand to be substantially verbatim recordings of oral statements made by the witness and there is no indication that they were recorded contemporaneously with the making of such statement.

I see no objection to you all looking at them and reading them. In my opinion they are substantially what the witness has testified to. They represent what Mr. Karp had noted down as the substance of the expected

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testimony of Mr. Jonas, and I think Mr. Jonas' testimony conformed pretty closely with what is here. I have no objection to your looking at them.

I have marked here these folders which are all fixed together. There is some matter in here that does not relate to anything you are interested in. I have marked between the slips of yellow paper here the two typewritten statements or—I would not call them statements either—it is what I said a few minutes ago. It is what Mr. Karp himself seems to have had transcribed or typed off by someone, what he understood Mr. Jonas would testify to.

It doesn't attempt to follow any grammatical form or anything of that sort. There is one of them. Here is the other one. The other statement has a number of notations along the margin of it, I take it, made by Mr. Karp himself, some of which is illegible to me, but it follows substantially the substance of the other statement.

You are entitled to look at them if you want them.



*Colloquy.*

Mr. Humrickhouse: Now, if your Honor please, since that matter is presently behind us, may we take up some other matters before the jury comes back so we can dispose of all of the preliminary matters.

The Court: Yes, sir.

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Mr. Humrickhouse: The next one would be the inspection of the Lenoir Mirror Company documents. Mr. Rush has made available to us beginning last night the documents of Lenoir Mirror Company which were in response to the defendant's subpoena *duces tecum*.

We have worked on those, or some of us did, until perhaps eleven o'clock or later, and they are continuing to work on them and the records, I believe, are here now, although I am just guessing as to that. I came up on the elevator with a file. We would like to be given, say, an hour to complete that examination. We don't know that it will be fruitful, but we certainly can't go into the cross examination before that time.

I would not take out of the hour the time consumed in using these. I would say just an hour for both of those.

The Court: I thought that objection had been made to the production of those documents.

Mr. Humrickhouse: No, sir, I don't believe it has, sir. We have looked at them and there was no question regarding our inspection of them.

Mr. Rush: If your Honor please, there was a motion tendered here last Monday and after considering the nature of the evidence which has been introduced so far, we came to the conclusion that we thought the parties

Colloquy.

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in this case were entitled to see what records they wanted. So they were brought here yesterday.

As to the question of the admissibility, we have nothing to do with that. But we felt it would be quite a burden on the Court if we waited until this morning to make this motion to exclude the evidence. It is the type of evidence that has been introduced in the case. For that reason we will not file a motion to quash the subpoena *duces tecum*.

The Court: You say it is the type of evidence that has been introduced in the case?

Mr. Rush: Yes.

The Court: What is the purpose of this examination of these documents? What is the purpose of the introduction of them?

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Mr. Humrickhouse: If your Honor please, we cannot state the purpose until we have seen the documents, but we think it may go to test the credibility of the witness, for one thing. I would hate to say what the pertinency of something is that I had not seen.

The Court: What is the nature of the documents that have been produced?

Mr. Rush: They are records of sales, orders, quotations of this company for a period from October until January 31, 1955. October, 1954.

The Court: Gentlemen, it is evident that those documents are the ones you are going to try to introduce on behalf of all these defendants here, showing prices charged following the date of this alleged agreement on October 28 or 29. I stated to you the other day very frankly that I was going to tell the jury to disregard all that testimony if it was introduced, because the fact that these parties may not

### *Colloquy.*

have lived up to their agreement, after making it, has no bearing whatever on the merits of the case. So the prices you charged after October 29—and the cases, I think, are particularly plain on that—particularly the Trenton Potteries Case states that specifically, the fact that the co-conspirators may not have lived up to their agreement makes no difference at all.

This testimony you want to get from Mr. Jonas

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is just what you want to introduce on behalf of the other defendants and which I told you the other day I was going to instruct the jury to disregard.

Mr. Humrickhouse: If your Honor pleases, I myself am not mindful of the Court's statement to that effect. As a matter of fact, it takes me completely by surprise. I thought your Honor had ruled specifically that price behaviour during November or late October, and November and December, 1954, and maybe 1955, would be admissible, to show whether or not an agreement was made. A circumstance to show. Not on the question of whether anybody lived up to the agreement or not. That is not the reason. The reason is to show whether or not there was an agreement.

I believe that even the Government suggested that they would like to carry that evidence into July and your Honor ruled that evidence would stop on or about July 1, 1955.

Mr. Karp: That is not a statement of the Government's position.

The Court: I think I did say that the evidence would be permissible on whether or not an agreement was entered into.

Mr. Humrickhouse: Exactly.

The Court: I said I was going to instruct the

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*Colloquy.*

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jury that if that meeting was held at Asheville as these witnesses testified, including the representatives of the defendants themselves, they could disregard anything that happened after that.

Mr. Humrickhouse: If they determined that an agreement had been reached.

The Court: Yes.

Mr. Humrickhouse: But they must first determine that before they can disregard it.

The Court: That is your statement.

Mr. Humrickhouse: I believe that is the law, sir. We were not asking for much time. We were just asking for an hour to examine those records and to finish our examination of these others. We don't know that we will use them. I say that frankly. But I would like the opportunity of seeing them. We have been trying to get them all during the last week.

The Court: But this man is not a defendant, and the only grounds on which his records would be admissible would be to impeach his credibility. I don't see how you are going to do it by these records, what he sold for afterward. How are you going to impeach his statements that the agreement was entered into by showing what he sold for afterward?

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Mr. Humrickhouse: Your Honor, I think you will have to leave that to our good judgment after we have looked at the record. I don't know, sir. I would not like to conclude.

The Court: I think it is a matter of the judgment of the Court as to what testimony is admissible.

Mr. Humrickhouse: I do, too. We don't know what the records are, and your Honor has not seen them. Neither have we. I am just asking that you let us see the documents, give us an hour.

*Colloquy.*

The Court: You do not know whether there is anything there that is going to impeach the witness or not?

Mr. Humrickhouse: No, sir. We have been denied these records for ten days and now we got them last night. That is my only plea to your Honor at this time. Not the relevance, not the admissibility, just the pure right to look into the defense of the case.

The Court: I will permit you to do it.

Mr. Humrickhouse: Yes, sir.

The Court: I think I am being extremely liberal with you.

Mr. Rush: Your Honor, may I make a statement to show exactly what we have? We have on the customers for the period of October 29 to January 31—that is October 29, 1954, to January 31, 1955—we have orders,

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acknowledgments and invoices of sales. We have the cash book and the ledger book showing prices paid. In addition to that, we have, I think about eleven letters which were written to customers dated either October 29, 1954, or November 1 following that date. Some of the letters did not go out until November 1st. That is all we have.

The Court: All right, sir.

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Mr. Karp: If the Court please, it is the Government's position that there is no basis at all for inspection of documents of a witness to impeach when it is clear that they have no grounds for impeachment. They don't know there is any basis for impeachment. There is nothing stated by the witness upon which there can be connected any



*Colloquy.*

records for impeachment. So we object to discovery now and delay of the witness' testimony. However, your Honor, if in your Honor's discretion you permit them to examine documents, then we believe the Government should have similar right to examine documents, so that the Government, too, can know what is in those documents and be prepared to examine on redirect.

The Court: I think that is probably correct.

Mr. Humrickhouse: We certainly have no disagreement with that.

Mr. Karp: We object to the delay because we think there has been no foundation laid for it.

The Court: I do not think there has, either, but I am going to let them have what they think is their defense in this case.

Mr. Humrickhouse: Now, if your Honor please, we have another matter.

The Court: Those papers there are to be examined

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only as indicated between those yellow slips of paper.

Mr. Humrickhouse: We will let Mr. Gilmer hold them. He knows what your Honor has indicated, does he not?

Mr. Gilmer: I should state I only know what he said about the yellow slips. I did not look at this file at all.

The Court: I read it to you at length.

Mr. Gilmer: Yes, sir.

Mr. Humrickhouse: Now, if your Honor please, in order to complete the record, we would like to call Mr. Jonas to ask him two or three questions in the absence of the jury. I think the questions are properly asked before the jury is here, but they go

*Colloquy.*

into the question of whether or not he testified before the Grand Jury. Rather than bring the jury back and bring Mr. Jonas to the stand and ask the questions and then have the jury recess——

The Court: What did you want to ask him?

Mr. Humrickhouse: I want to ask him did he testify before the Grand Jury in Roanoke in December 1956, and January, February or March, of 1957. How many times did he testify before the Grand Jury. Did his testimony before the Grand Jury cover in substance the testimony or the scope of the testimony to which

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he has testified in direct examination.

The Court: All right, sir; then what?

Mr. Humrickhouse: Then I want to move for the production of the Grand Jury minutes.

The Court: Exactly what I thought you were, and you are not going to get them.

Mr. Humrickhouse: We want to make the record.

The Court: Unless you can show some sound basis that contradicts between what happened in the Grand Jury room and his testimony before the Grand Jury and his testimony in this trial, I am not going to require the production of the Grand Jury records. It would be easy for any attorney to get access to the records of the Grand Jury by just such **a motion as you are making here.**

Mr. Humrickhouse: No, sir, your Honor, we are not attempting that. We want just a transcript of his testimony before the Grand Jury regarding the subjects to which he has testified on direct examination.

The Court: Exactly. And you can do that for each witness and get a complete transcript of the testimony before the Grand Jury, and that is not permissible.

*Colloquy.*

Mr. Humrickhouse: Your Honor, we would like to

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put him on the stand and ask him the questions so we may make a record.

The Court: You have stated what you want to ask him and I am denying your right to do it. So you have all the record you want, Mr. Humrickhouse.

Mr. Humrickhouse: I don't know what his answer would be, your Honor.

The Court: It does not make any difference what his answer would be.

Mr. Humrickhouse: We think it does, your Honor.

Mr. Karp: If your Honor please—

Mr. Humrickhouse: May I continue and finish, if your Honor please?

Counsel for the Government stated to your Honor that he had analyzed the Grand Jury transcript and made notes for his use in direct examination of his witness.

The Court: Yes, sir.

Mr. Humrickhouse: Certainly there is no secrecy in the matter now that he has admitted he has used them. Certainly we are being denied a right that was preserved to us under the Jencks case, and under the later Rosenberg case to inspect the Grand Jury record of the testimony of this witness after he has completed his direct examination. The reason for not giving the

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the production of Grand Jury minutes or transcript is to preserve the secrecy of Grand Jury proceedings. But once a witness has testified, once the Grand Jury has returned its indictment, the secrecy reason fades into a mist. There is no reason for it.

*Colloquy.*

The Government here has used the Grand Jury transcript and for your Honor to deny us that, you are denying us the right, as I say, under the Jencks case and under the Rosenberg case, later, and I will give you one of the citations later—

The Court: I am familiar with the Jencks case. I have read it a dozen times.

Mr. Humrickhouse: All right, sir. I would like to give your Honor the citation to the Rosenberg case. *255 Federal 2nd 870* decided 1957. There the trial court denied a motion by the defendant to inspect Grand Jury testimony, and an FBI statement of a Government witness. Instead the Court examined the documents and indicated wherein the testimony was in conflict. In an opinion by the Third Circuit, the Court of Appeals reversed with this language, "That practice, however, has been definitely disapproved by the Supreme Court (Jencks against the United States, 1957 353 United States 7 Supreme 1007). The failure of the trial judge to permit counsel for the defendant

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to inspect at the trial the witness' Grand Jury testimony and statement to the FBI as required by the rule announced in the Jencks case compels us to grant a new trial."

The Court: What is the date of that opinion?

Mr. Humrickhouse: 1957, sir.

The Court: That is a whole year. What is the date of it?

Mr. Humrickhouse: Your Honor, I don't have the month citation. I think it was in August of this year.

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The Court: Yes.

Mr. Humrickhouse: It was subsequent to the Jencks decision.

*Colloquy.*

The Court: The statute was enacted in September 1957 that cleared up all the misinterpretations of the Jencks decision.

Mr. Karp: That is right.

Mr. Humrickhouse: The statute has no reference to Grand Jury testimony.

The Court: Exactly.

Mr. Humrickhouse: Therefore, the Jencks case is still controlling.

The Court: The Jencks case does not say anything about Grand Jury action.

Mr. Karp: That is right.

Mr. Humrickhouse: Am I to understand, your Honor, that had I asked the witness the proffered questions that your Honor would consider that he would have answered that he testified before the Roanoke Grand Jury that returned this indictment, that he testified more than once, and that his testimony was in substance that to which he had testified, or covered the substance of his testimony on direct examination?

Am I to understand that your Honor assumes he would say that?

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The Court: Yes, I assume he would say that. Maybe he would say he wouldn't. You might ask him that question.

Mr. Humrickhouse: That is the reason I wanted to ask him.

Mr. Karp: Your Honor, if there be any questions asked of this witness, we object to their being asked in the absence of the jury. If he has any questions to ask the witness, it should be done before the jury.

Mr. Humrickhouse: We are entirely agreeable.

The Court: I don't want the question asked before the jury because I am not going to admit the testimony. I am trying to let him make his record.



*A. G. Jonas, for Government—Cross.*

Mr. Humrickhouse: That is what I was trying to do.

Mr. Karp: Moreover, what he testified before the Grand Jury is not necessarily pertinent to what he is testifying now. He could testify to a lot of things before the Grand Jury.

The Court: That is what I tried to impress on counsel and I thought you might grasp what I meant.

Mr. Karp: I did grasp it, but I wonder if they have.

Mr. Gilmer: Mr. Jonas.

A. G. JONAS, the witness on the stand at time of adjournment, being previously sworn, testified further as follows:

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By Mr. Gilmer:

(For Carolina Mirror Corporation and Edd F. Gardner:)

Q. Mr. Jonas, did you testify before the Grand Jury in Roanoke in 1956? A. Yes, sir.

Q. Did you testify before that Grand Jury more than once? A. Yes, sir.

Q. How many times did you testify before the Grand Jury? A. Three times.

Q. Three times. Can you give us those dates? A. I cannot, sir.

Q. Would you say that your testimony before the Grand Jury covered in general approximately the same subject matter as your testimony here at the trial?

Mr. Karp: I object, your Honor.

The Court: Was your testimony on the same general subject matter?

The Witness: It was, sir.

Mr. Gilmer: That is all.

*Colloquy.*

Mr. Humrickhouse: Now, your Honor, I move for the formal production of the Grand Jury transcript of this witness' testimony.

The Court: The motion is denied. That is all,

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Mr. Jonas.

Mr. Humrickhouse: There is one further question, your Honor.

I would like to inquire of Government counsel something regarding the impounded documents of the Lenoir Mirror Company. We have searched our file of the copies which we made under your Honor's order allowing us inspection, and we have found that the designation R19 apparently goes to the records of the Lenoir Mirror Company introduced at the Roanoke Grand Jury.

I would like to inquire if that is correct.

Mr. Karp: I don't remember what the code numbers are. I can look it up and tell you if it is pertinent. I don't see what this has to do with this case now.

The Court: He addressed an inquiry to you, Mr. Karp. I did not even catch what the inquiry was.

Mr. Karp: I don't remember these code numbers in my head.

Mr. Humrickhouse: We will make the assertion that the R19 designation of the Department of Justice is Roanoke, Lenoir documents.

Mr. Karp: It may well be.

Mr. Humrickhouse: If you don't know, just don't interrupt me.

Mr. Karp: If your Honor please, I object to that.

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The Court: Listen, gentlemen, sit down. Address your remarks to the Court.

Mr. Karp: Yes.

*Colloquy.*

Mr. Humrickhouse: If your Honor please, we have found that there are some documents missing, according to this number, and that is what we wanted to inquire about.

The Court: Documents of what sort?

Mr. Humrickhouse: Documents that we believe were impounded by your Honor's order. Let me give your Honor the numbers of them and Mr. Karp also.

We find that numbers R1 to R12, inclusive, were not given to us for copy. We also find that numbers R45 to R58, inclusive, were not given to us for copy.

Your Honor, the pertinency of this question will be shown in a minute, and I would like to inquire now of Government counsel if they could advise us regarding those documents and as to why we were not furnished with them for copy.

Mr. Karp: If your Honor please, I can't remember out of thousands of documents specific numbers. But I can say this: The Government very carefully went through the documents in preparation for the discovery and inspection of impounded documents to determine all documents which were obtained pursuant to subpena and which

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were the subject of the impounding order.

There were no impounded documents which were not obtained pursuant to subpena. Documents in an investigation like this are obtained voluntarily from any sources, and some documents from the same sources, from defendants themselves.

At the time of the inspection I recall that both Mr. Packard of the Pittsburgh Plate Glass Company and Mr. Anderson of the Pittsburgh Plate Glass Company asked me concerning certain documents which were not included in the impounded docu-

*Colloquy.*

ments. They were told that those documents were not subpoenaed and therefore not within the impoundment order.

Now, some of the documents which are called for have been introduced in evidence. Documents which were not subpoenaed under the Grand Jury were introduced in evidence, as well as those documents which were subpoenaed and impounded. Later a subpoena was addressed to us, returnable in this Court, calling for the production of documents which were to be submitted in evidence and documents which were presented to the Grand Jury but were not impounded.

Those documents which were presented to the Grand Jury in any way, but not impounded because they were not subpoenaed, will be produced at the proper time here.

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There are not very many. There are very few. But they will be produced.

If there was any question, your Honor, as to whether or not a document which was subject to discovery inspection was omitted, then it was incumbent upon counsel to tell Government counsel. It was incumbent upon defendants to tell us. They had an entire month for that. We answered their questions.

If they found later that there was an omission, and there could very well be an omission, which I doubt, however, because we are very careful—if there was an omission of a few documents out of thousands and thousands of documents—then it was incumbent upon counsel to tell us and indeed tell the Court that we were not acting in good faith. This is now merely a red herring which they are raising for some reason or another and we object to it.

The Court: Those documents to which Mr. Humrickhouse has referred, do you know what they related to? Can you tell by the numbers he has recited?

*Colloquy.*

Mr. Karp: I truly cannot. I will look it up, probably inside a few minutes, if we go upstairs.

Can any of you gentlemen tell by looking at the documents now?

Mr. Humrickhouse: I can inform your Honor the

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reason for my inquiry.

Mr. Karp: Mr. Carlson tells me R19-1 to R19-12 and R19-45 to R19-58 are telephone records, some of which are already in evidence, as counsel for defendants know.

Mr. Humrickhouse: Were they——

Mr. Karp: Let me finish, please.

—some of which are not in evidence, but which we have here ready to present to counsel for defendants pursuant to their subpoena and the order of the Court. Those documents were not obtained through subpoena. Counsel know that in the course of a Grand Jury that requests are made of people appearing before the Grand Jury for voluntary submission. That is done.

That was done with respect to Pittsburgh Plate Glass Company. Pittsburgh Plate Glass Company gave us documents in the course of the Grand Jury investigation, but voluntarily, and they did not get it pursuant to the discovery inspection. We did not give it to them because it was not so ordered.

The Court: I understand.

Mr. Karp: R19-1 to R19-12 we will try to ascertain. Do you know, Mr. Carlson?

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(No response.)

Mr. Karp: There are some documents which were obtained pursuant to subpoena, your Honor, but which pertained to the amount of business done by various mirror manufacturers, including defendants. You



*Colloquy.*

will recall, your Honor, when a motion was made pursuant to Rule 16 for discovery inspection of impounded documents, defendants called for certain documents, and we said if they are going to be inspected, let them have all the impounded documents, except that we would object to discovery of the amount of business done by other mirror manufacturers than the defendants. If defendants wanted to show to each other the amount of business they did, they were welcome to it, if they were asking for it in court. But we would not show, unless ordered by the Court, the amount of business done by other mirror manufacturers. They consented to it, and the order so provided, excluding the amount of business done by other mirror manufacturers. That very well may be accounted for by R 19-1 to R 19-12.

The Court: You say it may very well be accounted for. I want to know if you can find out what they do relate to, and I want to know why you want them, Mr. Humrickhouse.

Mr. Humrickhouse: I was trying to tell your Honor

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that. I wanted them because one of the documents was introduced in evidence. Mr. Karp has now informed us that it was a document which was obtained voluntarily and not in response to the subpoena. That answers my first inquiry.

The second one is, to call your Honor's attention to our motion for pre-trial production of records wherein we asked for the production of telephone records that were turned over voluntarily and these were not given to us or were not disclosed to the Court that they were in existence.

Mr. Karp: Oh, if your Honor please, that is a gross statement of some sort. The discovery inspec-

*Colloquy.*

tion sought by Pittsburgh Plate Glass Company dealt specifically with telephone tickets of Grove Park Inn. They did not ask for telephone tickets of anybody else.

Mr. Humrickhouse: We did not know about anybody else.

The Court: Then you cannot complain that they were not turned over to you if you did not ask for any.

Mr. Humrickhouse: We asked for a pre-trial production of them.

The Court: My recollection is that you asked for telephone calls emanating or going to Grove Park Inn during the Association meeting, and I ordered them to be turned over to you.

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Mr. Humrickhouse: That was not the full scope of our request. That was your Honor's ruling.

Mr. Karp: Your Honor, that was the full scope of the request.

The Court: Mr. Karp, you do not have to emphasize your side of the argument to support the Court. Find out what the documents are that they want, if you can, and I will rule on whether they are admissible or not, or whether counsel shall have them.

Mr. Humrickhouse: That will be satisfactory, sir.

The Court: What else do you have?

Mr. Humrickhouse: I have nothing further at this time.

The Court: Do you have anything further, Mr. Gilmer.

Mr. Gilmer: No, sir.

The Court: Are you finished looking at those?

Mr. Gilmer: No, sir, we have not had an opportunity to do that.

*Colloquy.*

The Court: I want to emphasize again that you are limited to those things that I specifically marked, and you can examine them in a few minutes because they are very brief.

Mr. Gilmer: I understand.

Mr. Lee: If your Honor please, I ask that the

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documents R 19-45 to 58, I think it is clear that the defendants are requesting the production of them now so that we may examine. If not, I wish to so move the Court.

The Court: I will not let you examine them until I find out what they are and are admissible.

Mr. Lee: I understand they are telephone tickets.

The Court: I do not know whether they have any pertinency to this case or not. I do not have the slightest idea. Gentlemen, I am not going to be diverted by these side issues that you have injected into this case. Calling for all kinds of documents and telephone calls and price records and everything of the sort, I am going to hold you to the issue in this case, and you know just as well as I do what it is. You say you want to examine those things that Mr. Rush's client produced here.

Mr. Humrickhouse: Yes, sir, your Honor. I wonder if we can examine them in the Marshal's office, if that is satisfactory with Mr. Rush.

Mr. Rush: They are in the Marshal's office now.

The Court: Go ahead.

Mr. Humrickhouse: Will your Honor give us an hour? We will try to be through by that time.

The Court: Yes, sir, but no more than that.

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Mr. Humrickhouse: Thank you.

(A one-hour recess was taken.)

*A. G. Jonas, for Government—Cross.*

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THEREUPON, at the conclusion of the foregoing discussion, the following proceedings were had in the presence of the jury:

The Court: Mr. Karp, here are your files (handing).

Mr. Karp: Thank you.

The Court: All right, gentlemen. Are you ready to call in the jury?

Mr. Gilmer: We are, your Honor.

Mr. Humrickhouse: We just advised Government counsel that Lenoir documents were in the Marshal's office if they want to see them. I don't know whether they do or not. I wanted to advise the Court that we so advised them.

Mr. Karp: We wanted to see them, but we cannot see them while we are in session, of course. We would not want to delay the trial.

The Court: Do you gentlemen want Mr. Jonas on the stand for cross examination?

Mr. Gilmer: Yes, your Honor.

The Court: Call in the jury.

(The jury entered the box.)

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A. G. JONAS, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

*Cross examination by Mr. Gilmer:*

(For Carolina Mirror Corporation and Edd F. Gardner:)

Q. Mr. Jonas, how long have you been engaged in the mirror manufacturing business? A. I was more or less born and raised in it.

Q. How long has the Lenoir Mirror Company been in business? A. Since 1916.

*A. G. Jonas, for Government—Cross.*

Q. Are you a principal stockholder in that company?  
A. Yes, sir.

Q. Do you or your family or the Lenoir Mirror Company have a financial interest in the O. W. Slane Glass Company? A. No, sir.

Q. You have no connection with the O. W. Slane Company at all? A. No, sir.

Q. Are any of your relatives connected with it? A. No, sir.

Q. Any of the relatives of your family connected with it? A. No, sir. Not to my knowledge.

Q. None of you have any interest in it?

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A. No, sir.

Q. Do the Slane people have any interest in Lenoir? A. Yes, sir.

Q. Is that a substantial interest? A. Yes, sir.

Q. Where is the Slane Company located? A. Statesville, North Carolina.

Q. Did you appear before the Grand Jury here in Roanoke? A. Yes, sir.

Q. How many times did you appear before that Grand Jury? A. Three times.

Q. Did you testify before the Grand Jury on all of those occasions? A. I did.

Q. When did you first meet Mr. Karp?

Mr. Karp: I object, your Honor.

The Court: Sit down, Mr. Karp. There is no objection to a question like that.

The Witness: I met him here in Roanoke. That is when I met him.

By Mr. Gilmer:

Q. About when was that? A. It was the day when I was first subpoenaed to testify in front of the Federal Grand Jury.



*A. G. Jonas, for Government—Cross.*

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Q. Can you tell us how many different times you have met with Mr. Karp about this case? A. It was three times, as I recall, that I had to testify.

Q. Where were you on those occasions when you talked to Mr. Karp? A. Here in Roanoke.

Q. Whereabouts in Roanoke? A. In the room down there. No, it is on this floor. I talked with him in his hotel.

Q. At Hotel Roanoke? A. Yes, sir.

Q. Did you go to Mr. Karp's room in the Hotel Roanoke? A. Yes, sir.

Q. And talked to him there? A. Yes.

Q. Were you alone there? A. Yes, sir.

Q. Was the door closed? A. Yes, sir.

Q. Was that between the time you first appeared before the Grand Jury and testified and the second time that you appeared? A. Will you re-state your question?

Q. I say the time that you went over to Mr. Karp's

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room at Hotel Roanoke and talked to him about the testimony in this case, was that after you had already testified once before the Grand Jury? A. No, sir. I talked with him before I testified the first time.

Q. And then you talked to him at the Hotel Roanoke the second time before you went back to the Grand Jury? A. Yes, sir.

Q. Where else have you talked to Mr. Karp about the testimony in this case? A. Charlotte Airport.

Q. When was that? A. I do not recall the date. I recall the circumstances that surrounded him wanting to see me, was in regards to records that the Government had subpoenaed. He wanted to go over them with me. I would say it was after the first time I testified.

Q. You met him there voluntarily? A. Yes, sir.

Q. Who made the arrangements for that meeting? A. Mr. Karp called me. He said there was some things that

*A. G. Jonas, for Government—Re-direct.*

showed up in these papers that the Government subpoenaed that he would like to speak to me about and asked me if I would come to Washington. I told him it was pretty hard. I asked him if he could not come to Charlotte. I would meet

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him at the Charlotte Airport and agreed to do so.

Q. How far is Charlotte from Lenoir? A. About 60 or 75 miles.

Q. And you voluntarily went 75 miles to meet him to discuss that matter with him? A. I felt like it was a Government request and I should abide by it.

Q. I understood you to state, Mr. Jonas, that the Slane Company and the Slane people have a substantial interest in Lenoir Mirror Company? A. Yes, sir, I told you that.

Q. Are you related in any way to the Slanes? A. No, sir.

Q. Or any of your people? A. No, sir.

Q. They just have a substantial financial interest in your company? A. That is correct.

Q. Do you know why the Slane Company and the Lenoir Company were not indicted in this case? A. No, sir.

Mr. Karp: I object.

The Court: Objection sustained.

Mr. Gilmer: That is all I want to ask him, your Honor.

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Mr. Morison: No further questions. You may stand down.

The Court: Do you have anything you want to ask?

Mr. Karp: Yes.

*Re-direct examination by Mr. Karp:*

Q. When you were brought before the Grand Jury, were you told about a statute of the United States which provided that any person testifying pursuant to subpoena is immune? A. Yes, sir.

*A. G. Jonas, for Government—Re-direct.*

Q. Exempt from prosecution under the antitrust laws concerning the matters which they testify about? A. Yes, sir.

Q. Were you told that would prevail unless you signed a waiver of immunity? A. Yes, sir.

Q. Did you sign a waiver of immunity? A. I did not.

Q. And provided with that statute, were you told that would apply to all persons testifying automatically? A. That was my understanding from the law which was read to me.

Q. Were you told whether or not that would apply to the person testifying, whether or not others were indicted by the Grand Jury, if the Grand Jury should decide to do so?

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A. Will you restate that question?

Q. Were you told whether or not that immunity applies to any person testifying whether or not the Grand Jury should indict a corporation of which such person is an officer? A. That was my understanding.

Mr. Gilmer: What was that question and answer, please?

(The question and answer were read by the reporter.)

By Mr. Karp:

Q. Your understanding was what? A. That a person who testified before a Federal Grand Jury would not be indicted as an individual.

Q. Do you understand that was the law, or the mandate of the law? A. That is what I understood it.

Q. And applies to all citizens whether defendants here or not? A. I think the law, as I interpreted it, read that any testimony which I might give before the Grand Jury would be immunized for the statements which I made. But in the event of perjury, I could have been indicted. That is my

*A. G. Jonas, for Government—Re-direct.*

interpretation of the law as Mr. Williams told me, my attorney.

**Q.** Did you understand that to be a special rule for you or whether that applied to Stroupe or anybody else who testified before the Grand Jury?

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**A.** I understood it to be anybody who testified.

**Q.** Mr. Jonas, you testified concerning a hassle with Messer. Would you explain just what the argument was there?

**Mr. Humrickhouse:** We object to it as not being proper re-direct examination, if your Honor please. There was no cross examination regarding that.

**The Court:** I did not catch the question. I was under the impression, too, that he was going into a matter which, if he wanted to go into it, should have been gone into in the case in-chief.

**Mr. Humrickhouse:** That is what I thought, sir. Would the reporter read the question?

(The question was read by the reporter.)

**Mr. Karp:** If your Honor please, in view of the fact that memoranda and statements concerning matters which Mr. Jonas had testified previously and stated, I think it only fair to develop that matter a little further.

I had not intended to on direct, but in view of the circumstances I ask the permission of the Court to go a little further with Mr. Jonas at this time.

**The Court:** There has been nothing in the cross examination that developed that. It is a matter you should have gone into in chief. I have tried to impress on counsel the other day the limits of examination, both

*A. G. Jonas, for Government—Re-direct.*

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in chief and cross examination and on re-direct. I think I used the term which counsel seem to find for some reason amusing, that when you had a witness and you wanted to examine him, you must exhaust him and not put in testimony on direct piecemeal, unless you can avow that you have forgotten something when you had the witness on the stand and ask permission to examine about it.

Mr. Karp: Your Honor, I do ask that permission.

Going through the record, I find that the answers to similar questions were not given fully. I thought my impression was that it was explained. I think it is desirable to explain those things.

I ask permission at this point in view of the fact that he was called back, and there will be very little additional time taken. I ask permission if I may extend my examination somewhat.

The Court: I don't know what you have in mind, but I will let you ask a question or so. If I think you are embarking on a long examination that you should have done before, I will stop you.

Mr. Karp: Thank you.

Mr. Gilmer: I thought he took him without the rule when he said he didn't intend to ask him that on direct examination.

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It was not anything he overlooked. He said he didn't intend to.

The Court: Go ahead, Mr. Karp.

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By Mr. Karp:

Q. Concerning that hassle that you testified to, what was the disagreement, if any, that caused any such hassle?



*A. G. Jonas, for Government—Re-direct.*

Mr. Rogers: If your Honor please, we object. That is just going over his case in chief. He leaves the thing open only as a bait to the defendant. We don't rise to the bait and now he comes in.

The Court: I will let him go ahead. I do not see the materiality of it. Maybe he has some point. You may answer the question, Mr. Jonas, if you remember what it was.

The Witness: My recollection on it was I had fortified myself to the extent that I was fed up with John Messer cutting prices. In the past I had never expressed myself to him, my actual feelings at all times. So when we got in this meeting up there at the Bluffs, and I could see where Mr. Messer apparently had had a change of heart and wanted to raise the prices, we being so much younger than Mr. Messer and everything, I have always had that respect for him but I just decided to tell him, "John, you are the one that started this price war to begin with." I can't recall just the exact things that took place, but he as much as said I was a damn liar, that I

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started it. I said, "What do you mean, I started it, Mr. Messer?" He said, "You shipped mirrors into Galax, Virginia. You started it." I said, "It is not so." I said, "You are barking up the wrong tree." I said, "I have never shipped a square foot of mirrors into Galax, Virginia, and I want you to retract and quit accusing me of starting this price war, when you are the one that did it."

I might add further that after the statement was made, Mr. Messer turned so red that I thought he was going to have a stroke. That was the whole gist of it, trying to blame me for something that I was not guilty of.

*A. G. Jonas, for Government—Re-cross.*

By Mr. Karp:

Q. Mr. Jonas, will you tell this Court and jury whether there was any understanding or any arrangement which would prevent you from shipping into Galax? A. No, sir.

Q. Why couldn't you have shipped into Galax? A. I could have if I wanted to, but I never did.

Q. You didn't want to? A. I never solicited any accounts in Galax, Virginia.

Q. Is that because they were Mr. Messer's customers? A. No, there was nothing to keep me from doing it if I so desired. But knowing him as I do, I knew if I put

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a square foot in there, he would raise Cain about it.

Q. You referred to an argument about who started cutting prices; was that something new in the industry to cut prices? A. No, it has been done in the past, and the present, too, I might add.

Q. In the previous times you had met or were aware of meetings held by mirror manufacturers for discussion of prices—

The Court: I think I will stop that. That should have certainly all been gone into in chief if it has any materiality. I am not going to open up this case again.

Mr. Karp: That is all, your Honor.

*Re-cross examination by Mr. Gilmer:*

(For Carolina Mirror Corporation and Edd F. Gardner:)

Q. Mr. Jonas, I understand you to say that it was carefully explained to you that if you testified before the Grand Jury that you would not be indicted.

Mr. Karp: If you Honor please, I object. That is the custom with every witness before a Grand Jury.

The Court: Sit down, Mr. Karp.

*A. G. Jonas, for Government—Re-cross.*

Mr. Karp: They are apprised of their rights.

The Court: Of course it is, but he has a right to ask the witness if he was informed of that fact.

By Mr. Gilmer:

Q. I understood you to say that was true. A. I think I testified to that a moment ago.

Q. That is what I understood. I understood you to say that you were also informed that did not apply to companies in which you were interested, or corporations. A. I don't recall that question being asked me.

Q. Didn't you say something about that you understood that your immunity did not go to the corporation, that the corporation could be indicted, or that your attorney told you that, or Mr. Karp told you that? A. I don't know whether that question came out.

Q. I am asking you that question now. A. I knew that the corporation could be indicted.

Q. You knew that it could be? A. Yes, sir.

Mr. Karp: Your Honor, I object; the statute is clear.

The Court: Mr. Karp, sit down, please.

By Mr. Gilmer:

Q. Mr. Stroupe testified before that same Grand Jury, did he not? A. I don't know who all testified, sir.

Q. You know Mr. Stroupe was there, don't you? A. I know he was there.

Q. You know that the Stroupe Mirror Company was indicted, don't you? A. Yes, sir.

*A. G. Jonas, for Government—Re-cross.*

**Mr. Gilmer:** That is all I want to ask.

**The Court:** Gentlemen of the Jury, with all that talk, the statute itself provides—it is not a favor granted by the District Attorney or the attorney for the Government, who appears before the grand jury—the statute itself provides that in investigations under the Sherman Act, which is often referred to as the antitrust act, that an individual is granted immunity on his testimony before the Grand Jury. That is, he cannot be indicted for what he testified before the Grand Jury, although if he is an officer of a corporation that immunity does not apply to the corporation itself, and the corporation can be indicted, but the individual cannot be, unless he waives immunity. That is what the statute provides.

**Mr. Jonas** apparently understood the law correctly. I don't know where he got his advice on it, but from what he said of his understanding of it, he apparently understood the law correctly.

**Mr. Gilmer:** Yes, sir, he is in agreement with all

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of us on that.

**The Court:** What?

**Mr. Gilmer:** We all agree he understood that.

**The Court:** All right.

**Mr. Rogers:** May I examine the witness?

**By Mr. Rogers:**

(For Galax Mirror Company, Inc.; Mount Airy Mirror Company; and J. A. Messer, Sr.:)

**Q. Mr. Jonas,** when you and Mr. Messer got into that argument, somebody has said here, one of the other witnesses, that you told Mr. Messer right to his face that he was the worst price cutter you had ever known anywhere or any time. Did you not make that statement? **A.** I don't recall the exact wording of it.

*A. G. Jonas, for Government—Re-cross.*

Q. Didn't you tell him that in effect? A. I think I said a moment ago he accused me and I turned around and told him he was accusing the wrong person, and he was the one who started it.

Q. Didn't you make the statement there to him that he was the worst price cutter that you ever had known or words to that effect? A. I might have said it. Of course, it had been the accepted fact anyway.

Q. You mean it is accepted generally in the trade? A. Yes, in the trade.

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Q. Is it not also true that in the trade he is known as "the price-cutting s. o. b."? A. I have heard some comment along those lines.

The Court: Mr. Rogers, I thought you wanted to ask this witness one question. I did not intend that Mr. Gilmer and you should divide the questioning.

Mr. Gilmer: Your Honor, I represent other people.

The Court: Don't you represent the same people?

Mr. Gilmer: No, sir.

The Court: You are sitting so close together.

Mr. Gilmer: That is because of the table arrangements, but he does not represent my client.

The Court: I cannot keep track of all of you.

Mr. Gilmer: I can understand that.

By Mr. Rogers:

Q. You said Mr. Messer got so red in the face and got so mad that you thought he was going to have a stroke? A. Yes, I made that statement.

Q. I just wanted to get that: You had been apprised by these telephone calls from Asheville that Mr. Messer had told them that he was going to raise his prices and you were



*A. G. Jonas, for Government—Re-cross.*

skeptical as to whether he meant it or not? A. I was informed as I testified Friday that these telephone calls from Asheville I received, Mr. Messer was

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wanting to raise his prices, and everybody else there was in agreement, and I was the only one of any consequence that had to go along or else the prices would not be increased. I think I testified that Friday.

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Q. That is right. I just want to bring out the fact that you were informed by these telephone calls that Messer had informed them that he was going to raise his prices.

A. Yes.

Q. That is what I wanted to bring out. After Mr. Messer got mad and flew off the handle there at the Bluffs, you recall that when he left he was still mad, wasn't he?

A. I think when we left, we left on a little better feeling than we were at one time during the meeting.

Q. Yes, sir. You recall, don't you, that Mr. Messer said, "I am going to 78, and the rest of you can do as you damn please"? A. He implied in this respect as I took it that if he agreed to write a letter on October 29th, he said we had to write them; if we didn't raise our prices and send out letters, he would not raise his prices.

Q. He said he would not raise his prices? A. Yes. He was so childish about it, it all had to be done in one day.

Q. You recall when they left, the last thing he said was that he was going to 78 and the rest of you could do as you damn please? A. I don't recall his statement.

Q. Would you say that he didn't make that statement?

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A. I said I don't recall.

Q. You would say you would not say he either did or did not; is that your testimony? A. I would not.

*Motion for Acquittal.*

Mr. Rogers: That is all.

The Court: Stand aside, Mr. Jonas.

THEREUPON, the Court and Counsel retired to Judge's Chambers for a conference on the record, and the following proceedings were had:

The Court: Mr. Karp, here is a copy of that Act.

The reason I did not think it was satisfactory to send the jury out in the corridor, you have a lot of spectators there and they are apt to go out and maybe make some comment about what was said or what the lawyers said and the Court said, so I thought we would have a little more protection from the standpoint of secrecy in Chambers.

Mr. Gilmer: If your Honor please, I would like to move on behalf of Carolina Mirror Corporation and Mr. Gardner for a judgment of acquittal with special reference to Mr. Gardner. That is the only motion I have at the moment.

Mr. Morison: Taking it alphabetically, I make the motion on behalf of John Messer individually, and Mount Airy Mirror and Galax Mirror for acquittal.

Mr. Humrickhouse: If your Honor please, on behalf of Pittsburgh Plate Glass Company and individual defendant W. A. Gordon, I move for a judgment of acquittal and I should like to argue the matter at the appropriate time.

I don't have the transcript of all the documents with me, such as your Honor has. I don't think my argument would consume too much of the Court's time, but I don't have any notes with me now and I

*Motion for Acquittal.*

would like to state the reasons for my motion. They are more than one. It is not the question of evidence.

. . . . .

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The Court: I think I sustained the objections where they were made during the trial. I do not recall it. As far as these motions for acquittal are concerned, I say I think you gentlemen are making them formally because you are too good lawyers to know that if the jury believes the Government's case, there is a case there. Except as to one. I do not see that Mr. Gordon has been connected with this.

Mr. Humrickhouse: That is what I want to tell your Honor.

The Court: I cannot see that he was. He was there, and the most that can be said is that he told Mr. Jonas over the phone, when Jonas asked him was there any dis-

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cussion of prices up there, and he said, "I understand"—probably said—"I understand the boys have been talking about it, but I don't know what they are going to do," or something of that sort. It does not go much further than that, as far as I can see. I may have overlooked some of the testimony.

Of course, his name has been brought in at other places. I do not doubt that Pittsburgh Plate Glass was interested in this whole thing. I think this branch down there represented by Mr. Barrett—

Mr. Humrickhouse: He was here.

The Court: —was probably involved like the rest of them. I do not see anything to involve Mr. Gordon personally, individually. I do not think there is enough testimony to involve him individually.

*Motion for Acquittal.*

Mr. Humrickhouse: Your Honor will grant that motion?

The Court: I will hear what Government counsel has to say on it.

Mr. Karp: The testimony is that Gordon told the others that they ought to raise their prices. That is all in the context of the conspiracy. Stroupe testified to that and I believe Buchan testified to that. "What do we do?" he said. "You ought to raise your prices."

Here we have these series of telephone calls,

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one succeeds the other right at 10:30 at night, and Mr. Hearn is trying to convince Jonas to raise his prices. Everybody is going along, it is up to you. Now he wants assurance from Mr. Gordon, and he talks to Gordon. Gordon calls him and gives him that assurance.

The Court: He did not give him assurance that they are going to raise prices.

Mr. Karp: He said they are going along. They are talking of raising prices. The whole background is of raising prices, and they discussed 78 per cent.

The Court: This is exactly what happened as far as those telephone conversations are concerned, if I remember it correctly. Gentlemen, sometimes I do not remember testimony correctly. That Hearn called up Mr. Jonas and told him that they were all talking about raising prices up there, and John Messer suggested that they raise prices, and Jonas distrusted Messer so much that he was not willing to accept anybody's word about the thing. I think he said at one time he wondered if it was a joke or phony or something like that.

He asked him to have Mr. Gordon call him up because he probably trusted Gordon. He asked Mr.

*Colloquy.*

Gordon if he know anything about it, and Gordon said, "Well

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the fellows up here are talking about raising prices. I think maybe they are in earnest." I do not think that is the exact language, but he might have gone that far. So Jonas still was not willing to commit himself until he had a further talk with somebody. He had this talk up on the Parkway.

Mr. Humrickhouse: At The Bluffs.

The Court: That is, as far as I can see, about all Mr. Gordon is involved in.

Mr. Karp: Then they call up and let Gordon know they raised prices. Why did they do that?

The Court: They might very well let him know it.

Mr. Karp: Then they write the letter.

The Court: The question is, did he have any part in it.

Mr. Karp: They have the meeting, the letter is supposed to go out, and he wants a letter from Pittsburgh Plate Glass, and they have the assurance that the letter is going out. "This will be taken care of." Gordon is in the middle of the conspiracy in Asheville. He tells them to raise prices. He discusses this whole problem of raising prices with Jonas on the phone. He gets him back to Hearn. He expresses the view that they ought to raise prices. I think, sincerely, that Mr. Gordon participated in that conspiracy and was the

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central figure there.

The Court: I do not think there was any evidence that Mr. Gordon was authorized to direct the course of this branch where it was that Mr. Barrett presided over.



*Colloquy.*

**Mr. Humrickhouse: At High Point.** The evidence is to the contrary.

**The Court:** It was somebody else, Hancock, or something like that—I forget the name—but it was something like that. Mr. Gordon was the representative of the Pittsburgh Plate Glass Company which was deeply interested in all the plate glass sales to these mirror people, and he attended this convention. Everybody apparently had confidence in him. At least Mr. Jonas had confidence in his truthfulness and integrity, and when they began to approach him with this proposition that he thought was strictly a phony, he asked to talk to Gordon about it and asked him what he knew.

All the evidence discloses is that Mr. Gordon said that they are talking about it up here and "I think they are in earnest." I do not know whether he went that far, but they are talking about it. There is nothing that I can see in the testimony, Mr. Karp, that indicates that Mr. Gordon participated

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in this price raising business, or suggested the price to be fixed, or did anything of the sort. Maybe he did so. Maybe he kept himself out of it as a matter of discretion and wisdom because he knew the dangers of anything of that sort. Anyhow, I do not see that he got into it. That is the way it looks to me.

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**Mr. Karp:** It looks like he was the central figure and the source by which the contact with PPG was made. PPG raised their price on November 1. He is contacted on October 29. He is told of the letter, and the letter is sent by Pittsburgh Plate Glass. It shows that he is the manager of glass sales and he is the superior in that field. It looks like he is not

*Colloquy.*

only the central figure around whom Stroupe and Carolina revolved, but around whom Hearn revolved, and about whom Jonas revolved, and he knew that the scheme to raise prices was in earnest, that it was not a mere leg-pulling which Jonas thought might have occurred.

The Court: What you are saying now, Mr. Karp, is what you suspect or what you surmise, but there is not any proof of that.

Mr. Karp: I think there is enough there for the jury to determine whether or not Mr. Gordon was a participant in the conspiracy.

The Court: I don't think so. I think I would have to direct a verdict of acquittal as to him.

Mr. Humrickhouse: Yes.

The Court: Of course, it is denied as to these corporate defendants, and I assumed you expected it to be:

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Mr. Humrickhouse: As the basis of the motion of Pittsburgh Plate Glass Company for a judgment of acquittal,

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I would like to assign the following grounds: (1) the denial of the Court to grant the bill of particulars. I think there is no question about the fact that a bill of particulars rests within the sound discretion of the trial court. However, the turn in this case shows the real necessity for having issued a bill of particulars so that the defendants would have known what they were charged with and would not have been defending and batting at straws all summer trying to come up with evidence before October 1954 up to and including the date of the indictment which was March of 1957.

## Colloquy.

Second, we would like to call your Honor's attention to the fact that we were prejudiced by your Honor's ruling in failing to allow us to take the pre-trial depositions of Mr. Jonas in the civil case.

Next, we would like to call your Honor's attention that we think we were prejudiced in that your Honor erred in failing to grant us a pre-trial inspection of the documents of the Government which were under subpoena.

I call your—

The Court: Wait a minute. Documents which were under subpoena. You mean documents before the Grand Jury?

Mr. Humrickhouse: No, sir; which were under subpoena through Mr. Karp. A subpoena directed to Mr. Karp.

Mr. Karp: There was no motion for that.

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Mr. Humrickhouse: Wait just a minute. The documents were in two categories. One, documents subpoenaed that went before the Grand Jury which were impounded and which your Honor granted us permission to inspect. The next category was those that were turned over voluntarily to Government counsel or to agencies of the Government.

We subpoenaed through a subpoena *duces tecum* issued out of this Court the remaining documents. Your Honor denied us pre-trial inspection of those, with the limitation of granting us permission to see certain Grove Park telephone records.

The Court: That is right.

Mr. Humrickhouse: The subpoena called for all records that had been turned over, or that had been used before the Grand Jury or that would be used in the trial of this case.

The Court: Yes, sir.

*Colloquy.*

Mr. Humrickhouse: We have been prejudiced——

Mr. Karp: May I interrupt a moment on clarification? The subpoena called for documents which the Government would introduce in evidence and which were presented to the Grand Jury but not impounded. That was the subpoena.

The motion for pre-trial inspection was for inspection of telephone tickets of Grove Park Inn. It was

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specifically mentioned.

The Court: No, it was broader than that and my recollection is that I was not going to permit pre-trial inspection because that simply attempted to discover what the case was that the Government had.

Mr. Humrickhouse: That is exactly correct.

The Court: However, I could see no harm in your seeing the telephone tickets and allowed you to see them. All right. Now I think we are in agreement, so go ahead.

Mr. Humrickhouse: We are in agreement. I want to call your Honor's attention to the fact that had this telephone bill of Jonas or Lenoir Mirror Company, either or both, been given to us and had the Court been informed regarding those as the Court was informed through us of the Grove Park Inn telephone records which we found out about by interviewing the Grove Park Inn people, then we would have been able to trace all of the telephone calls that were listed on there, or we might have been able to trace it.

That was your Honor's reason for giving us the Grove Park Inn records. The fact that the record itself does not show what the call is, and these defendants are entitled to——

*Colloquy.*

The Court: What telephone calls is it you say you did not have a chance to trace?

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Mr. Humrickhouse: The one from Mr. Jonas to Pittsburgh on October 29th, and the one from Mr. Jonas to Pittsburgh on November 1st, and other calls on there to other places.

The Court: Pittsburgh is your client.

Mr. Humrickhouse: Certainly.

The Court: Doesn't it know what telephone calls it has?

Mr. Humrickhouse: No, sir.

The Court: You gentlemen all through this case, your case seems to be based that your clients have not disclosed any of the facts to you. Every one of them has known exactly what they did. They either concealed it from you all, which I would think would be a very strange procedure, or you have tried to get the same information from the Government.

Mr. Humrickhouse: I don't see how your Honor could say that our clients had concealed or might have concealed a telephone call which showed on the records of one A. G. Jonas or Lenoir Mirror Company when we keep no records of incoming calls.

The Court: That did not appear until you made that statement right now.

Mr. Humrickhouse: I tried to say that a few moments ago, sir. Anyway, that is the point. I just want your

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Honor to know.

The Court: Anyhow, the telephone call that Mr. Jonas made to Pittsburgh Plate Glass Company—and I do not even remember if there was one—is certainly immaterial in this case.



*Colloquy.*

Mr. Humrickhouse: We hope you will tell the jury that.

Mr. Karp: There were calls from Jonas to Pittsburgh Plate Glass Company in Pittsburgh, and he testified that he spoke to Prichard, who is the assistant to Mr. Gordon and told him what had happened and that the letter was to go out.

The Court: That is right.

Mr. Karp: The telephone ticket contains a call to High Point, but Mr. Jonas has not identified that particular call.

The Court: If Mr. Jonas called your client up in Pittsburgh and told him that they were going to send out this letter, your client knew it.

Mr. Humrickhouse: Yes.

The Court: And you could certainly have gotten the information from him. That is what makes me say so much of your argument would depend on the assumption that your clients had concealed all the information they had from you.

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Mr. Humrickhouse: No, sir.

The Court: Go ahead with your argument.

Mr. Humrickhouse: I should like to continue, if I may.

The Court: All right, sir.

Mr. Humrickhouse: If your Honor pleases, as further grounds for our motion we would like to call your Honor's attention to your failure to give us a continuance on October 28th and again when it was renewed on November 18th.

We think we have been prejudiced by that. We have already told your Honor why and we want to call it to your Honor's attention.

The Court: It develops that at least as to the Pittsburgh Plate Glass Company, your client, you

*Colloquy.*

have assembled all that information in a form and you cross-examined Mr. Barrett about it.

Mr. Humrickhouse: No, sir.

The Court: On your sales.

Mr. Humrickhouse: No, sir. We just cross-examined him on the limited sales for November.

The Court: You made him your witness on that subject so it is quite evident that you had plenty of opportunity to get it together.

Mr. Humrickhouse: Certainly as far as we were

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concerned we had ample opportunity to get our records together. That was not the reason for the motion. The reason for the motion was that we did not have the opportunity to get the records of the other defendants and compare them with ours. That is what we wanted to do.

The Court: I presume they have their records.

Mr. Humrickhouse: May I continue, sir?

The Court: Yes, sir.

Mr. Humrickhouse: Further, we would like to call your Honor's attention to what we consider to be an erroneous ruling of the Court in limiting the scope of the indictment and thus, in effect, amending the indictment by ruling that evidence as to any price behavior, or I thought, and I may be wrong in this, evidence as to anything that happened after July 1955 would not be admitted.

## 910

The indictment charges specifically that on or about October 1954 or prior thereto, these defendants did engage in a conspiracy and so forth, and that it continued up until the date of the return of the indictment. We think that your Honor, in limiting the evidence, as your Honor has said this morning, and

*Colloquy.*

as you said in chambers the other day, as I think I understand your Honor's ruling now, that your Honor would permit price behavior in late October 1954 and in November 1954, and December, and maybe January, but you were not certain about that. But certainly we could not offer any evidence after July, 1955, and we made a proffer and your Honor said that our proffer was sufficient.

Your Honor, that brings into focus the motion which we made on the first day of this trial for a dismissal of the indictment on three grounds, as your Honor remembers. One was that it failed to state an offense, and that it was duplicitous, and also that we were denied a jury trial. We think that the procedure, the trend in the case since that time points up the fact that we are being tried for a different offense from that for which we were indicted. That being so, sir, we think that there is at this time, the government having rested its case, if your

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Honor permits the jury to decide upon the evidence that has been introduced, that your Honor, even if the jury comes in with a verdict of guilty as to everybody, your Honor would have to set it aside, because there is a fatal variance between the allegations of the indictment and the proof of the conspiracy, the conspiracy alleged having been one conspiracy which started in October 1954, and continued until March 1957, and the conspiracy proven being one that took place in October 1954, without any continuance. There is not any question about the limitation of that.

We further want to call your Honor's attention, of course, as a corollary, to the admission of evidence or the failure to admit evidence in view of your Honor's ruling in those regards, particularly cutting

*Colloquy.*

us out on the evidence after July 1955, and indicating that you would not permit evidence to be introduced on price behavior after that time. Those, I think, state the grounds for our motion. I am sorry it had to be labored, perhaps, but I wanted your Honor to know how seriously we consider the matter of our motion.

In finality, I want to say that I think your Honor's decision in refusing us inspection of the

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Grand Jury minutes is a realm of error that under the ruling of the Jencks case and the case that I cited to your Honor in court, that we have been denied our defense in the case. Therefore, we think in this posture of the case you should grant us our motion for a judgment of acquittal as to Pittsburgh Plate Glass Company.

The Court: You have not been denied any opportunity to make a defense. If you can prove that these people did not have this meeting up in Asheville and did not have these phone conversations and did not have the meeting up on the Bluff, and did not enter this agreement and send out these letters and fix this discount, you have a perfect defense.

Mr. Humrickhouse: If I could proffer that Mr. Jonas testified one way before the Grand Jury and another way here—

The Court: You gentlemen yesterday—this is an example of it—Mr. Gilmer made a great furor, and you—that you wanted to examine all of these records of Mr. Jonas to discredit him, to affect his credibility. You wanted his statements given to counsel for the Government, and they were furnished you. You went in there and spent an hour this morning examining Mr. Jonas' records and then you come in and

*Colloquy.*

say "We have nothing to ask him." That is exactly the same way you want to get hold of these Grand Jury minutes. You have no reason to think that there is any contradiction in there. You just want to get hold of Grand Jury minutes, and that is not permissible.

**Mr. Humrickhouse:** We feel, your Honor, that the law gives us that opportunity, and if the law does, we think we are being denied that right.

**The Court:** I do not think the law gives you the opportunity unless there is a reasonable showing that there is a contradiction.

**Mr. Humrickhouse:** How could we know what is in there when we have not been permitted to interview Mr. Jonas, and we have not seen the Grand Jury transcript.

**The Court:** Of course, you could not know what is in there. It is not the custom in this jurisdiction and I do not know of it being a custom in any federal jurisdiction, unless by some local rule of court, that the defendants are permitted to examine Grand Jury minutes just on the statement they desire to do so. Some states permit that practice, but it certainly is not an approved practice in this jurisdiction or anywhere in this part of the country, neither in the

state courts or federal courts or anywhere in this circuit. Unless you can give some assurance that will satisfy the Court that there is sound reason to think or some reason to think that there is a contradiction between the witness' previous testimony and the present—and you have given nothing of the sort—so I say I think it is of the same piece as this earnest insistence yesterday of your desire to see



## Colloquy.

Mr. Jonas' records, because you wanted to test his credibility. You were going to tear him to pieces on the strength of those records. You spent an hour looking at them and you come in and say, "We have nothing to say."

Mr. Lee: May I inquire as to those exhibits that I have asked that the subpoena cover that Mr. Karp sent for the list, that I wanted to see. R 19-45 to 58?

Mr. Karp: I will cover, if you wish me to, the entire scope raised by Mr. Humrickhouse. He referred to R 19-1 through R 19-12.

The Court: What are the exhibits?

Mr. Karp: R 19-1 through R 19-3 are Lenoir's customers, the total amount of business that was excluded from the order for discovery and inspection and was not called for by the subpoena *duces tecum* served by Pittsburgh Plate Glass Company.

## 915

Mr. Humrickhouse: Lenoir's customers and the volume of business.

Mr. Karp: And the total amount of business, yes. R 19-4 through 19-6 are retail sales tabulation showing the amount of retail business of Lenoir. They likewise are in that category of excluded from government inspection order and not called for by the subpoena. R 19-7 through R 19-9 cover the amount of jobber business and in the same category as those heretofore mentioned.

Mr. Humrickhouse: Jobber, j-o-b-b-e-r?

Mr. Karp: Yes. R 19-10 through R 19-12 are the same thing, covering the amount of business of cabinet manufacturing customers.

The next group of documents were R 19-45 through R 19-58, is that correct?

Mr. Lee: That is what I am interested in.

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*Colloquy.*

Mr. Karp/ R 19-45 is a letter presented to the Grand Jury, but not through subpoena, and was not impounded, therefore not covered by the order for discovery inspection under Rule 16 granted by the Court. Since it was presented to the Grand Jury, it is subject to the Pittsburgh Plate Glass subpoena, and it is here for production purposes under that subpoena under the order of the Court.

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R 19-46 to R 19-49 are telephone records presented to the Grand Jury, but not impounded. They are subject to the Pittsburgh Plate Glass subpoena, and will be here.

R 19-50 through R 19-51 are telephone records presented to the Grand Jury, but not impounded. They are now in evidence as Exhibit 89. Therefore, further production is obviously not necessary.

R 19-52 through R 19-55 are telephone records presented to the Grand Jury but not under subpoena, and not impounded.

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They are subject to the Pittsburgh Plate Glass Company subpoena.

R19-56 through R19-57 are telephone records presented to the Grand Jury but not impounded, and are now in evidence as Exhibit 88.

R19-58 is a letter dated January 29, 1957, from Lenoir Mirror Company to Samuel Karp, listing dates when discounts of the 1950 list were applicable and shows that a 78 per cent discount off the list was applicable from November 1, 1954, to June 16, 1955. This was not obtained pursuant to subpoena, was not impounded, was not covered by the order for discovery inspection under Rule 16. It is also not covered by Pittsburgh Plate Glass subpoena

*Colloquy.*

because it is not a document which was offered in evidence by the Government and was not presented to the Grand Jury.

Mr. Lee: Now, may it please your Honor, what Mr. Karp speaks of, the Pittsburgh Plate Glass Company, is a subpoena of all the defendants, not just limited on behalf of Pittsburgh.

Mr. Karp: It is the Pittsburgh Plate Glass subpoena which I understand all defendants now have come in and say they want the advantage of, and we stipulated that no new subpoena need be served on me.

Mr. Lee: I do not desire R-45 but I do desire

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the right to inspect R-46 through 49, 52 through 55.

Mr. Karp: R-46 through 49 are now in evidence.

Mr. Lee: No, sir, that is now what you stated to the Court.

Mr. Karp: Excuse me. They are subject to the subpoena.

Mr. Lee: I would just like to see them.

Mr. Karp: I don't understand. Of course, the subpoena will be honored. We have a folder of documents which are called for by a subpoena and which will be made available. We can make them available any time the Court says. We will make them available immediately.

The Court: Anytime they call for them.

Mr. Lee: I have certainly been requesting them, Mr. Karp. You so understood me?

Mr. Humrickhouse: May the record show that we called for all of these documents on the first day of the trial and Mr. Karp would not present them.

Mr. Karp: Some are not even included in the subpoena. Therefore the statement by Mr. Humrick-

*Colloquy.*

house, your Honor, is not accurate. Some of the documents I referred to I stated explicitly were not called for by the subpoena.

Mr. Lee: Every one I am asking for you stated was called for by the subpoena. All I am asking is just please let me see them.

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The Court: It is not a question of letting you see them. You all want to see. Put them on the table and look at them. Let them muddle them as long as they want.

Mr. Karp: We have them in the court room for that purpose.

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Pursuant to adjournment, the afternoon session, on November 25, 1957, continued as follows:

The Court: Gentlemen of the jury, the Government has announced it has finished its case in chief, and I am of the opinion that there is not enough evidence that has been produced to hold Mr. Gordon—W. A. Gordon—individually as a member of this alleged conspiracy or agreement. There seems no doubt that Mr. Gordon, who is connected with the Pittsburgh Plate Glass Company, was at Asheville and visited around among his friends and acquaintances and men in the industry who gathered there, and he probably or apparently, if the evidence is correct, had knowledge that these men were discussing the matter of prices. But there is nothing to indicate as a matter of accuracy that he conspired in any agreement or attempted to urge these people to make any agreement or entered into any agreement or understanding himself in connection with prices.

*Sam J. Prichard, Jr., for Defendants—Direct.*

I do not think the evidence would be sufficient to hold him individually as a member of any conspiracy, if such is proven. For that reason, I will direct a verdict of acquittal for Mr. Gordon individually, and you need not consider him in any further aspects of the case.

The other defendants, all of them, are still on

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trial.

Mr. Humrickhouse: May Mr. Gordon be excused now, your Honor?

The Court: May he be discharged?

Mr. Humrickhouse: Yes.

The Court: Yes, sir, if he desires to go.

Mr. Humrickhouse: Is your Honor ready for the defense to proceed?

The Court: Yes, sir.

(All parties are present, and the jury in the box.)

Mr. Humrickhouse: I call Mr. Prichard, please.

Mr. Karp: If your Honor please, may I interrupt to say that documents called for by subpoena duces tecum which have not been introduced in evidence are here on the table for defendants.

Mr. Lee: May I see them, Mr. Karp?

(Marshal handing documents to Mr. Lee.)

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SAM J. PRICHARD, JR., called as a witness on behalf of Pittsburgh Plate Glass Company, being first duly sworn, testified as follows:

*Direct examination by Mr. Humrickhouse:*

Q. Please state your name and present address? A. Sam J. Prichard, Jr., Pittsburgh, Pennsylvania.



*Sam J. Prichard Jr., for Defendants—Direct.*

Q. By whom are you employed, Mr. Prichard?

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A. Pittsburgh Plate Glass Company.

Q. How long have you been so employed? A. About twelve and a half years, sir.

Q. In what capacity? A. I started here in Roanoke as a territorial salesman in 1945 and towards the end of 1949 or 1950 I was transferred to Charlotte, North Carolina, as special sales representative to the Southeast. In April, 1954, I went to Pittsburgh in the Plate Glass Sales Department.

Q. What is your present position? A. I am now assistant manager of plate glass sales.

Q. How long have you held that position? A. Since March, 1955.

Q. So, then, sir, in October and November of 1954 you were in Pittsburgh as a trainee in the Plate Glass Sales Department, were you not? A. That is correct.

Q. Mr. Prichard, there has been testimony by Mr. A. G. Jonas that he telephoned you or telephoned Pittsburgh on October 29, 1954, and talked with you and told you about a gathering at a place called The Bluffs, and that there had been an agreement regarding price and asked that you convey his message to Mr. Gordon. Did Mr. Jonas make any such call to you? A. He did not.

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Q. There has also been testimony that on November 1, 1954, he again called you and made reference to this previous conversation of October 29. I ask you if he made such a conversation or if such a conversation took place? A. It did not.

Q. When did you first learn of the Bluffs meeting, as it is called? A. I believe it was the spring of this year.

Q. From whom did you learn it? A. Mr. Anderson, our attorney.

Mr. Humrickhouse: You may cross-examine.

*Sam J. Prichard, Jr., for Defendants—Cross.*

*Cross examination by Mr. Karp:*

*(For the Government:)*

Q. What position do you have with Pittsburgh Plate Glass at the present time? A. I am assistant manager of Plate Glass Sales, sir.

Q. Are you an assistant to Mr. W. A. Gordon? A. I am, sir.

Q. Were you an assistant in the same capacity to Mr. W. A. Gordon in October, 1954? A. No, sir, I was not.

Q. Were you in November, 1954? A. No, sir, I was not.

Q. What was your position with Pittsburgh Plate Glass

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in October, 1954? A. I was a trainee in the Plate Glass Sales Department doing, you might say, clerical work, learning the office routine.

Q. Where? A. In Pittsburgh.

Q. What were your duties there? A. I worked with Mr. Benson, our Sales Service Manager, Mr. Hunsiker, who handles heavy plate glass and plate glass specialties, I worked with Mr. Proctor, I worked with Mr. Fath, and I took over his duties when he left that year.

Q. Did you have anything to do with taking orders of glass? A. I took orders on occasion.

Q. Did you have occasion to take orders from mirror manufacturers? A. Occasionally.

Q. Did you have occasion to take orders from Lenoir Mirror Company? A. I may have had.

Q. Will you say that on October 29, 1954, you received no call for any purpose from Lenoir Mirror Company? A. I did not say that, no, sir.

Q. Would it have been possible for you to have received a call from Lenoir Mirror Company on October 29, 1954?

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A. Yes, it would.

*Sam J. Prichard, Jr., for Defendants—Cross.*

Q. Would it also have been possible for you to have received the call on November 1, 1954, from Lenoir Mirror Company? A. Yes, it would.

Q. Would it have been possible on October 29, 1954, for you to have received a call from A. G. Jonas of Lenoir Mirror Company? A. Yes.

Q. Would it have been possible for you on November 1, 1954, to have received a call from Mr. A. G. Jonas? A. Yes.

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Q. Are you familiar with the prices charged by Pittsburgh Plate Glass Company for glass? A. I am reasonably familiar.

Q. Are you familiar with the prices charged by various warehouses for their products? A. I am not.

Q. Would it have been your duty to transmit any message you would have gotten concerning prices for mirrors to Mr. Gordon if you were asked to do so by a customer?

A. What sort of prices do you mean, sir?

Q. Any prices. A. We don't get any prices.

Q. Would it have been your duty to transmit any message given to you by a mirror manufacturer customer to Mr. Gordon if you had gotten one? A. I would say yes.

Q. Do you remember whether on October 29, 1954 you received a message from Mr. Jonas for Mr. Gordon? A. I do not.

Q. Would you say you did not receive any message from Mr. Jonas to Mr. Gordon? A. My answer was that I do not remember.

Q. You do not remember? A. No.

Q. On November 1st, do you remember whether you

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received a message from Mr. Jonas directed for Mr. Gordon? A. I do not.

Q. You do not remember? A. No.

Mr. Karp: That is all.

*Sam J. Prichard, Jr., for Defendants—Re-direct.*

*Re-direct examination by Mr. Humrickhouse:*

Q. Now, Mr. Prichard, Mr. Karp has asked you about the possibility of a number of telephone calls about a number of subjects. I want to ask you if, during the telephone calls on October 29th or November 1st, if made by Mr. Jonas to Pittsburgh wherein he may have talked to you, if Mr. Jonas told you anything about a Bluffs meeting or asked you to convey to Mr. Gordon any message regarding a Bluffs meeting?

Mr. Karp: I object, your Honor. There is a long leading question with a lot of implications, leading the witness.

The Court: The witness has already answered once before, but he can answer it now.

The Witness: Would you repeat the question?

Mr. Humrickhouse: Read it, please.

(The pending question was read by the reporter.)

The Witness: He did not.

Mr. Humrickhouse: That is all, your Honor.

The Court: Have the records of telephone calls  
on

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those dates been introduced?

Mr. Karp: Yes, they have.

Mr. Humrickhouse: May the witness be excused?

The Court: Yes, sir.

Witness excused.

Mr. Morison: I call Mr. John Messer, Jr.

*John Messer, Jr., for Defendants—Direct.*

JOHN MESSER, JR., called as a witness on behalf of Galax Mirror Company, Inc., Mount Airy Mirror Company, and J. A. Messer, Sr., being first duly sworn, testified as follows:

*Direct examination by Mr. Morison:*

(For Galax Mirror Company, Inc., Mount Airy Mirror Company and J. A. Messer, Sr.):

Q. State your name and address, please, sir. A. John Messer, Jr., Galax, Virginia.

Q. How old are you, Mr. Messer? A. Thirty-nine.

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Q. What business are you engaged in? A. Mirror manufacturing and furniture manufacturing.

Q. Mirror manufacturing and furniture manufacturing. With what companies are you associated? A. Galax Mirror Company, Webb Furniture Corporation, Galax Furniture Company and Mount Airy Mirror Company.

Q. What position do you hold with those companies? A. Vice Chairman of the Board of Directors.

Q. Of each of the companies named? A. Yes, sir.

Q. The Mount Airy Mirror Company and the Galax Mirror Company which you mentioned, are they the same as the defendants in this case? A. Yes, sir.

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Q. Are you familiar with the other companies that have been named in this case, that is, including Pittsburgh Plate Glass, Stroupe Mirror Company, Virginia Mirror Company, Weaver Mirror Company and Carolina Mirror Company? A. Yes, sir.

Q. Do you buy your materials from any of the defendants? A. Yes.



*John Messer, Jr., for Defendants—Direct.*

Q. Which one? A. Pittsburgh Plate Glass.

Q. Do you buy from anyone else other than Pittsburgh?

A. Yes.

Q. Who is that? A. Libbey-Owens-Ford Glass Company, Mondial Trading Company.

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The Witness: I believe at the end of September I talked with my dad and showed him our statement. We make a monthly trial balance of our company. I showed this to him and talked to him about it. I told him that our prices were too low, and we were losing money. It was happening and we had to do something about it.

By Mr. Morison:

Q. This was in September 1954, when you first brought this to the attention of your father? A. Yes, sir.

Q. What other events leading to the date of October 29 when you have stated that the price announcement was sent out occurred relative to the price change made on the 29th? A. I don't believe I understand that. Would you repeat that?

Q. The question I put to you, Mr. Messer, was whether or not you knew of any of the reasons why the October 29 price change was made. The Court objected in part to that, and I asked you if there had been any conversations

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between you and your father relative to that. Now you have stated yes, in September, if I interpret correctly, that you brought to your father's attention the fact that losses were being sustained by the companies.

Now I ask you, from September until the time of the price change on October 29th, whether any other matters were discussed between you and your father relative to

*John Messer, Jr., for Defendants—Direct.*

making a price change, if you recall. A. Well, there were several factors involved at the time we were talking after we had closed our books in September which I would say was in early October.

Q. What were they? A. Business was picking up, especially in our furniture plants. This is bedroom furniture and they use mirrors. We knew that it was picking up. I told my dad it looked to me like it would be a proper time to get a higher price, especially under the conditions that we were selling.

Q. What was the inventory of glass, Mr. Messer, at that time in September and October? A. We didn't have any glass. We were getting glass in and as fast as we were getting it in, we were making it into mirrors and sending it out.

Q. When did you first hear of any shortage in supply of plate glass for mirrors? A. At the Asheville meeting in October.

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Q. Did you have any indication of shortage prior to the Asheville meeting? A. Yes, we did.

Q. At what time, if you remember? A. Well, it was more or less a creeping thing. We were not getting glass as fast as we needed it. We were continually calling the plate glass people trying to get more glass along in October.

Q. Did this same condition of slowness of delivery occur in November as well as October? A. Yes.

Q. Had you heard the announcement of any plate glass manufacturers concerning the shortage in the early part of October? A. Not that I know.

Q. Then do I understand you to say that you first heard the details of the glass shortage when you attended the mirror convention in Asheville? Is that your statement? A. That is right. We got the full impact of it there.

Q. But you were aware that there was a shortage before you went there?

*John Messer, Jr., for Defendants—Direct.*

Mr. Karp: Your Honor, the counsel is leading and testifying for him. He is putting words in his mouth.

The Court: Do not lead the witness.

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By Mr. Morison:

Q. When you got to Asheville, did you consult with the plate glass manufacturers about the shortage? A. Yes.

Q. Did you consult with both Pittsburgh and Libbey-Owens-Ford? A. I talked with Pittsburgh. I don't recall talking with Libbey-Owens.

Q. Pittsburgh has been one of your chief suppliers? A. That is right.

Q. What did they tell you about the shortage? A. There had been several hurricanes around that time. The glass industry was selling quite a bit of glass to the car industry. If I remember, I had heard that there was around a 50 per cent increase in the glass in the car. That is where most of the glass was going.

Q. How did they say they could handle delivery of glass to you, if you went into it?

Mr. Karp: Your Honor, the question of how did they say does not show he talked with any particular persons. He should show who he talked with.

Mr. Morison: Mr. Messer testified he talked with representatives of Pittsburgh. I will be glad to ask him the question.

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By Mr. Morison:

Q. Who did you talk with at Pittsburgh? A. Mr. W. A. Gordon.

Q. Did you ask him how much glass you could expect to receive in view of his statement about the shortage?

A. That was the first thing I asked him.

*John Messer, Jr., for Defendants—Direct.*

Q. What did he say? A. He said that we were going to have to go on an allotment.

Q. An allotment. What allotment did you actually have after you returned from Asheville? A. I have forgotten exactly how much it was, but it was not enough to run our plant full time.

Q. How many days could you operate on the glass shipped? A. From the plate glass shipped it would be about two days, maybe—about two days a week.

Q. Two days a week. In view of this situation, did you make any effort to secure a supply of glass from other sources? A. Yes.

Q. Explain what you did to try to secure other glass. A. The first thing we looked up people, if there was any place we could get glass, from importers, or manufacturers who manufactured glass overseas, in France

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and Belgium.

Q. Yes, sir. Did you actually get any glass from these sources? A. Yes, we did.

Q. Coming again, Mr. Messer, to the discussions that you had with your father prior to October 29, and keeping in mind that the Asheville meeting was from the 24th of October through, I believe, the 27th, did you have any further discussions about price, as president of Galax Mirror, with your father prior to attending the Asheville meeting? A. Yes, we had several. It was a matter of convincing my dad that we should have a higher price. He is right hard headed at times. When he makes up his mind to do something it is hard to change him. That was the problem I faced with him at the time.

Q. Would you relate to the jury what those discussions were? What was the subject? What did you discuss? A. Of course, I was trying to convince him of the fact that we were losing money pretty fast. Of course, he knew that. What I was trying to do was to get a higher price.

*John Messer, Jr., for Defendants—Direct.*

Q. Did you discuss with him as a factor in your belief that the price should be raised that there was a shortage of glass?

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A. Yes, I did.

Q. Did your father agree with you on the change of price? A. Yes, after several discussions.

Q. You say after several discussions that he was stubborn, but after several discussions he did agree. I would like to try to fix the point of time as to when the last of these discussions or series of them that you had occurred. Keeping in mind, as I have reminded you, that the meeting in Asheville was on October 24, which was about the third week in the month of October, when in point of time were those discussions? A. The bookkeeper usually gives our monthly statement anywhere around the fifth or seventh of the month. So I would say it would be around the first week in October.

Q. Speak a little louder, Mr. Messer. They can't hear you. A. The first week in October.

Q. So these discussions, three in series, occurred some time in the first week of October. What price did you recommend to your father be established? A. Well, we figured up, as we always do when we are talking about a change in our prices, several discounts to see how we come out on it.

Q. My point was not what you did, but did you

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recommend to your father a price change or a price increase, and if so, what did you recommend?

Mr. Karp: Your Honor, he is leading the witness and putting words in his mouth.

The Witness: I recommended 78.



By Mr. Morison:

Q. You recommended the price of 78? A. Yes, sir.

Q. This recommendation was made in the first week in October? A. That is right.

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Mr. Morison: This, your Honor, I am putting in for identification is a letter sent out on February 14, 1955, by Mr. Messer as president of these companies to the trade. I would like it to be marked for identification Defendants' Exhibit 28.

By Mr. Morison:

Q. Mr. Messer, I hand you this letter dated February 14 on the stationery of Galax Mirror Corporation and will ask that you read it and see whether or not you are familiar with the letter? (Does that refresh your recollection about the letter, Mr. Messer? A. Yes.

Q. Were you familiar with it at the time it went out? A. Yes.

Q. I will now ask that you read that letter.

Mr. Karp: I object. It is not in evidence yet.

Mr. Morison: I will offer it in evidence.

The Court: Objection sustained. We are not concerned with any price change.

Mr. Morison: This is not a price change, your Honor.

The Court: You said it was sent to the trade. That is the statement you made.

Mr. Morison: That is correct, your Honor. It is

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not a price change. We think it has material bearing

*John Messer, Jr., for Defendants—Direct.*

on the situation which I am trying to elicit from this witness.

Mr. Karp: It is a self-serving declaration which has nothing to do with this case.

The Court: I don't see any materiality. This simply states that the Pittsburgh Plate Glass Company told them that glass was still short or in short supply.

Mr. Morison: Your Honor, may I be heard on the Point?

The Court: Yes, sir.

Mr. Morison: The point of importance of this document is simply this: Mr. Messer had made his price change on October 29. He followed that in a very short time by his January 27 price announcement to a higher price. We will show as all of the evidence comes in that no one else made that price change. We would like to show from this letter that he communicated with his customers competitively from time to time, and this letter, particularly the second paragraph from the bottom—

The Court: Do not read it.

Mr. Morison: I will not read it. We think evidences certainly as a state of mind of this individual defendant and his companies that he was continuing to bear the same reputation that has been testified here from both

Government witnesses and defense witnesses as a price cutter, and indicates his complete disassociation from any such idea as a conspiracy.

The Court: I do not think it has quite that effect. In addition to that, if you are going to introduce that letter and try to show what he had in mind, bring the author of the letter on and not try to get it in through this witness.

*John Messer, Jr., for Defendants—Cross.*

Mr. Morison: Your Honor, I had averred to you that this will be connected, and I beg the Court's indulgence.

The Court: What do you mean "will be connected"? Connected with what?

Mr. Morison: It will be connected with the other evidence that we are adducing in the defense of defendants.

The Court: I believe all of it would have some connection with the defense.

Mr. Morison: Yes, sir.

May I permit him to read this to the jury?

The Court: No.

Mr. Morison: All right, sir.

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*Cross examination by Mr. Karp:*

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Q. Did you submit this Exhibit 22 to the Grand Jury as a statement of the quotations to your furniture manufacturers for plain plate glass mirrors? A. My company did.

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Mr. Karp: This is a list which was submitted to the Grand Jury on the return date of the subpoena *duces tecum* in December, 1956.

The Court: What does the document purport to be?

Mr. Karp: It purports to be a list of all discount quotations from 1953 to 1956.

*John Messer, Jr., for Defendants—Cross.*

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Mr. Morison: Your Honor, I have not objected to this. We went through the same thing with the witness Everett Mayes. The document, which Mr. Karp is trying to elicit I don't know what from this witness, was a document submitted in conformity with a Grand Jury subpoena requiring him to set forth all of the price changes during a period of time.

The Court: All right, sir.

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Q. Now, Mr. Messer, when did you first learn of this possibility of a glass shortage? A. I was talking to Pittsburgh every week about glass and we would call up about certain sizes we had to have and he would say, "We will try to get it to you this week." The end of the week would come and it did not come in and they said, "We will get it to you the first of the week."

Q. When you went to this meeting at Asheville, did they notify you that there would be any shortage of glass? Did you receive any letter from them? A. Not that I recall.

Q. When did the first discussion come around? Was that at the Asheville meeting? A. That is the first time we were told we were going to be put on allocation.

Q. Were you put on allocation? A. Yes.

Q. What was your allocation? A. I don't recall. There was not enough glass.

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Q. Wasn't it stated as a good time to raise prices because there is talk about a shortage? A. I talked to my father about raising prices before we went to the Asheville meeting.

*John Messer, Jr., for Defendants—Re-direct.*

Q. That is all right. You talked to your father before you went to the Asheville meeting and continued the talk at Asheville, is that right? A. I didn't talk about it at the Asheville meeting.

Q. Your father did? A. I don't remember my father talking about it at the Asheville meeting.

Q. You heard Buchan talking to you about prices there. A. I would talk to everybody that you run into in the halls, in the dining room or lobby. Everybody was talking about how rough business was.

Q. Did you talk to Mr. Gordon about prices? A. I did not.

Q. Were you present when others did? A. I was not.

Q. Did you talk to Mr. Buchan? A. I said I talked to everybody that I run into. I probably did talk to Mr. Buchan and anybody else that was there.

Q. Did you run into Mr. Gordon there?

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A. I run into Mr. Gordon? Yes.

Q. Yes. A. I did.

Q. Was he among those to whom you talked about prices? A. I talked to Mr. Gordon about glass and how much we were going to get.

Q. As a matter of fact, wasn't the question of glass raised after the prices were discussed? A. I wouldn't know.

Q. You wouldn't know? A. No.

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*Re-direct examination by Mr. Morison:*

Q. Mr. Messer, you were asked about what information you received prior to the time you went to Asheville, which



*John Messer, Jr., for Defendants—Re-direct.*

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indicated that glass was short. In response to a question which Government counsel asked you as to what information you received, you said you talked to Pittsburgh and you talked to them about every day. I would like to ask you if you remember any incident in your conversation with Pittsburgh people which telegraphed to you that there was a real shortage? A. When we get an order from a customer, and they want it shipped, and we order the glass from Pittsburgh, we want it shipped so we can ship our customer. During that time we would need certain sizes for certain people. We would call up and say, "Can we get these sizes this week?" Pittsburgh would say, "We will do everything we possibly can."

Sometimes they would get it for us and sometimes they could not.

Q. This was in the months of early October of 1954. I want to fix the time.

Mr. Karp: Your Honor, I object on the ground that this has been held to be immaterial so far as our examination is concerned on the shortage business.

The Court: Objection overruled.

By Mr. Morison:

Q. Was this in early October 1954, that you began to hear that deliveries were not being made? A. It was in September and October.

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Q. In your conversations with the Pittsburgh sales people, did they tell you anything about the automobile glass and its effect of shortage of glass for you? A. Yes.

Q. What did they tell you? A. They told us that glass in cars had increased in sizes and that they were building wrap-around windshields. It was something new for them

*John A. Messer, Jr., for Defendants—Re-direct.*

and it was taking an awful lot of plate glass. In fact, I believe they told me they were filling up a mine shaft with glass that was broken. There was some kind of a form, your Honor, that they used to bake the glass to fit and it would break in trying to make it fit.

Q. Government counsel asked you to look at an exhibit which you filed with the Grand Jury which showed that the dollar volume of your business in 1955 was greater than the dollar volume of your business in 1954. He said, in fact you must have gotten more glass.

The question I want to ask you is this: Did you know at the time that you increased your price on October 29 that you would get glass in any substantial amount? A. That we would get glass?

Q. Did you know when you put the price announcement out on October 29, 1954, that you would get enough glass to do the volume of business that you did in 1955? A. We were told that we were going to be allotted

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glass.

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Q. Now, Mr. Messer, counsel for the Government handed you a copy of the January 27, 1955 price announcement. You identified on that a handwritten note. Do you recall from seeing that what customer had called you about that price? A. I do not.

Q. You do not. Who put out the January 27, 1955 price announcement? A. It was signed by my father.

Q. Do you recall whether you discussed that with him before he put it out? A. Yes, I do.

Q. What was that discussion? A. In this particular letter, he raised his discount from 78 to 77 and increased the extra work which is beveling and edging from a half

*John Messer, Jr., for Defendants—Re-direct.*

a cent an inch for edging to a cent an inch and beveling from a cent an inch to a cent and a half an inch.

Q. Yes. A. I was opposed to the extra work increases.

Q. You were not opposed to the increase to 77, provided he did not add this additional charge on the beveling?

Mr. Karp: I object, your Honor. Mr. Morison is just doing the testifying and he knows it.

Mr. Morison: All right. Read the answer of the

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witness back.

(The reporter read the answer indicated.)

By Mr. Morison:

Q. He did not answer. It was objected to. Were you opposed to the increase to 77? A. No, I was in favor of that.

Q. What was the result of your discussion of that? A. The only thing I could remember about it is my dad sent the letter out. He is the boss. I remember the reason he wanted to increase our extra work. We had spent a considerable amount on our beveling machines to repair them and put them back in operation.

Q. How much money had you spent on beveling machines? A. Several thousand dollars.

Q. Have you any idea approximately what it was?

The Court: What is the materiality of that?

Mr. Morison: The materiality of it is, your Honor, that here is a departure in price which was radical from that of anyone else made within two months after the October 29 announcement. I want to show the discussion between this man and his father as to the price and how that came out with his father making the determination. All right, sir.

*David C. Wilson, for Defendants—Direct.*

Mr. Karp: If your Honor please, I think it is immaterial in the first place, what happened two months

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later. Besides, the witness testified that that letter was withdrawn and asked the customer to disregard it. If you are going into that, we can go into June 1955 and show it was then that he raised prices together with others. I don't think that is material.

The Court: All right.

Mr. Morison: I would like to correct that. The next price increase was not in June of 1955 but September.

Mr. Karp: I say we have evidence that it was June 1955, but we don't have to go into that because all this is immaterial. I am saying what evidence we have to offer.

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DAVID C. WILSON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

*Direct examination by Mr. Morison:*

Q. Will you state your name and occupation, please, sir? A. Dr. David C. Wilson. I am a physician and specialist in the field of neurology and psychiatry.

Q. Where do you practice, Dr. Wilson? A. University of Virginia.

Q. Will you state your professional background in this field of medicine of neurology and psychiatry? A. I graduated from the University of Virginia, and after different types of hospital and residency training

*David C. Wilson, for Defendants—Direct.*

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I went to the University of Pennsylvania, where I was in the Graduate School there, where the courses were in neurology and psychiatry. That is nervous and mental diseases. After being there, I took charge of the Department of Psychiatry at Clifton Springs Sanitarium in New York State, and from there I went to Johns Hopkins for some more training in psychiatry, and after that I came to the University of Virginia as Chairman of the Department, and have been there since, and have been there in the University Hospital. I am no longer Chairman. I retired as Chairman two years ago.

Q. Doctor, have you examined Mr. J. A. Messer, Sr., a defendant in this case? A. Yes, sir.

Q. When did you examine him and how did you come to be requested to examine him? A. Dr. Crawford referred him to me, stating that he wished this man examined, and also I had some correspondence with you, I believe.

Q. Yes, sir. Is Dr. Crawford a physician here in the City of Roanoke? A. That is right. He asked that we examine this man. He was concerned over his physical and mental status; and especially asked us to study his memory and the condition of his memory.

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Q. Yes, sir. How long was Mr. Messer under examination and observation by you at the University of Virginia Hospital? A. He came in on October 10 and stayed there until the 16th.

Mr. Karp: What year?

The Witness: 1957. Then he came back again. He left for about ten days, I would say, and came back on the 26th—the 20th, it was not ten days—he came back on October 20, and stayed there through the 24th of October.



*David C. Wilson, for Defendants—Direct.*

By Mr. Morison:

Q. Doctor, would you tell what examinations were made of Mr. Messer by you and your staff at the hospital? A. We were told to give him the "works", I should say, and we did. We put Mr. Messer through everything that seemed to be indicated. He was examined from a physical standpoint, and as far as his nerves go, he was examined for his neurological condition, the state of his brain and of his lungs and heart and blood vessels, kidneys, and so forth. Then we examined him from a mental standpoint also, and called in all the different specialists in these fields that seemed to be indicated. I can detail those examinations if you wish.

Q. I don't think it is necessary, Dr. Wilson. I

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understand that Mr. Messer was referred to you by Dr. Crawford. Did Dr. Crawford refer to you his medical records and history at the time of the referral? A. He sent me letters to Dr. Cox and reports that he sent to Dr. Cox previously, starting back in 1953, and again in 1955. We had complete, I would say, access to his records.

Q. Was that medical history considered by you and your staff in connection with the examination that was made? A. Yes, sir.

Q. Did you and the members of your staff under your supervision interview Mr. Messer in connection with his examination? A. We did.

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The Court: We are not concerned particularly with Mr. Messer's general physical condition, but only with regard to his condition from the standpoint of his ability to testify as a witness.

*David C. Wilson, for Defendants—Direct.*

The Witness: I was asked that question. Mr. Messer is somewhat, shall we say, sensitive, and somewhat emotional. His blood pressure does have a tendency to go up. Also, he does have spells. He has a history of convulsions, and he had while with us a falling out spell with some jerking and turning of the head and became unconscious. I don't believe—let me go on a little further. You want me to answer your question. I would say that I don't think it will do Mr. Messer a great deal of harm to testify. I do think, though, that his testimony would be questionable. He is liable to have a spell. He also becomes confused.

The Court: You say his testimony would be questionable. Doctor, do you mean by that that you think his memory is such that you could not rely too much on the accuracy of the statements he made?

The Witness: That is right. I might go on with that, if you wish. One of the difficulties in examining Mr. Messer is that he has what we call a denial syndrome.

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He has been a very strong, a very powerful man. He has these defects in his memory, and I would say some defects in his physical makeup. It is very hard for him to accept this. So he puts out quite a story covering up his defects. Sometimes he will tell you what is exactly the truth. Next time he won't, because—that is the reason I say his memory is unreliable. He may tell you what is exactly true and the next time he won't. It is very difficult to tell whether he is telling the truth or not. Sometimes he shows very remarkable memory, distant memory, and then he may forget something that happened two hours before or a day before. His recent memory is much more markedly involved than his

*David C. Wilson, for Defendants—Direct.*

remote memory. Still his remote memory is also involved. It is in this area, I think, that he fabricates, as we call it, that is, he makes up a story to cover his ignorance, perhaps more than he does on the recent memory.

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The Court: I don't know Mr. Messer by sight, but it has been stated to me that he has been present in this courtroom during this trial, which has consisted of seven or eight trial days.

Would it be harmful for him to take the stand as a witness?

The Witness: I don't think it would be harmful to him. No. I believe Mr. Messer would enjoy it very much.

By Mr. Morison:

Q. Dr. Wilson, you said in your findings that you found that he had hardening of the arteries in the head, in the brain area. Has Mr. Messer suffered a loss of memory as a result of that, among other things? A. Mr. Messer, I think we can say from the history combined with our findings, had what we would call a hypertensive encephalopathy, if you want to get the term. What it means, he had some sort of spasm of his blood vessels beginning in 1953. Then in 1955 I feel that he had a stopping up of a blood vessel in his brain, and at that time he had a spell where he apparently had a grand convulsion, what we call a major convulsion, with a good deal of—I think he was unconscious for about a half hour, according to the record.

I think he has had probably two major convulsions since that time. He fell on the street on one occasion. I would say that there has been some damage to the brain from the

*David C. Wilson, for Defendants—Direct.*

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stopping of the arteries and that, and these spells, I think, do have some effect on the memory that he produces, because in our electroencephalogram, that is where you take a brain wave tracing—take electrodes on the brain—he has these numerous spikes which are evidence of abnormality in the brain.

These were over the temporal lobe of the brain and they would indicate that in this area he probably is having discharges of electrical current which affect him. He can have those without any outward evidence—I mean motor evidence—anything that you could see, but I should think they would have something to do with his rather unusual—and I said unusual a minute ago—how spotty he is in his behavior.

He is quite confused one time and another time he is quite clear.

Q. Would you say that as of today his ability to remember is definitely impaired? A. Yes, sir.

Q. Is that loss of memory a continuing thing? A. I think he has some definite areas of memory loss at all times, and also it varies from time to time in its intensity, I would say.

Q. Specifically, Doctor, what would you say as to the quality and condition today of Mr. Messer's memory for, say, the past five years?

The Court: Just a minute, Mr. Morison.

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I understand he never came under your observation until October 10th, wasn't it?

The Witness: That is right.

Mr. Morison: Your Honor, I may have misled you and Dr. Wilson. I am asking Dr. Wilson as to

*David C. Wilson, for Defendants—Direct.*

the state of Mr. Messer's present memory as to events in the past five years.

The Court: Yes.

By Mr. Morison:

Q. That was my question, Doctor. A. He told us one or two different stories regarding that period. I would say I feel some periods in there he doesn't remember at all, and some others I think he is rather vague about. However, I do think he varies somewhat in his memory over that period from day to day; also, how close he was to one of these spells that he has.

After the spell that he had with us, he was quite confused for a couple of days. He was a different sort of a—his responses were different.

Q. Doctor, let me ask you, then, in his present ability to remember the past five years, would you say that his memory is reliable? A. I don't believe so, no.

Q. It is not reliable? A. I don't think you can rely on his—

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Q. One final question, Doctor. I don't want to extend it. You mentioned that Mr. Messer was fighting his condition of loss of memory. Do I understand you to say that he was denying that by fabricating gaps in his memory in order that people would not know that he lost his memory? A. I think you can say that all right. Perhaps more to fool himself in a way than it is others. This is very often sort of on the unconscious level when people do this. It is not as if he were—he is pretty well convinced that what he is saying when he fabricates is true.

Q. Then he is not intentionally trying to deceive anyone? A. Well, I would say it is probably 50-50. I think there is some. It is impossible to say how much is really conscious and how much is unconscious.



*David C. Wilson, for Defendants—Cross.*

Q. Is this condition an unusual thing to find in a man suffering from hardening of the arteries in the brain area?

A. No, sir. It is a fairly common syndrome. It is a very common finding. That is the reason it has a very definite name and has been described.

Mr. Morison: Thank you, Doctor. You may inquire.

*Cross examination by Mr. Karp:*

(For the Government:)

Q. Dr. Wilson, would Mr. Messer, if he took the stand

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and took an oath to tell the truth, understand the meaning of the oath? A. I think so, yes.

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Mr. Karp: Then, your Honor, in view of Dr. Wilson's answers to Mr. Morison, and particularly to the Court, and his last answer, I have no further questions.

The Court: All right.

Mr. Morison: You may stand down, Doctor.

The Court: Will you come by here a minute, Doctor?

The Witness: Yes, sir.

Witness excused.

Mr. Morison: Your Honor, I would like to now ask that an exhibit which I asked be introduced—it was numbered for identification Defendants' Exhibit No. 28—I offered it yesterday through John Messer, Jr. The Court at page 947 through 949 excluded it from evidence, and the basis, your Honor, as I understand it, is that you said that it should be introduced by the man who wrote it, Mr. Messer, Sr.

*David C. Wilson, for Defendants—Cross.*

I ask now that I be permitted in view of the testimony of Dr. Wilson to put it in evidence.

Mr. Karp: Objection.

The Court: I think there was something in the letter that I thought young Mr. Messer could not have known.

Mr. Karp: Moreover, your Honor, it has been testified Mr. Messer could tell the truth and could recognize the letter and tell what it is.

Mr. Morison: Your Honor, I don't think it is

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proper to argue that with reference to the motion.

The Court: Wait a minute, gentlemen.

Mr. Morison: Your Honor, referring to that, of course, we did establish with the witness John Messer, Jr., that this came from the files of the company.

The Court: It has no pertinence to the issues in this case. It is simply a letter of February, 1955, from Mr. Messer, Sr., to a list of his customers stating that there was still a shortage of plate glass up in Pittsburgh, he had been talking up there and he would keep them informed of what happened. It might be that he would have to increase prices in the future, after February 1955, and that has no bearing whatever on the issues in this case.

Mr. Morison: Your Honor, the purpose of our introducing the letter—

The Court: I do not know what the purpose is, but it has no bearing on the issues in this case, and I will rule it out.

Mr. Morison: All right, sir. That is all, your Honor.

*Robert E. Weaver, for Defendants—Direct.*

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ROBERT E. WEAVER, called as a witness on behalf of Weaver Mirror Company, Inc., being first duly sworn, testified as follows:

*Direct examination by Mr. Lee:*

Q. Would you state your name and residence? A. R. E. Weaver, Rocky Mount, Virginia.

Q. Mr. Weaver, what business are you engaged in? A. Mirror manufacturing.

Q. With what company are you connected? A. Weaver Mirror Company.

Q. What is your official position with Weaver Mirror Company? A. President.

• • • • •

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Q. Do you recall the business conditions of the mirror company in the latter part of September and October, prior to October 24. A. You mean conditions of—

Q. The mirror business? A. It was in pretty bad shape. Prices were reduced and volume was down.

Q. How about the glass situation? A. We could not get all we needed. It was getting very scarce.

Q. From who at that time were you securing your supply of plate glass and other glass? A. Pittsburgh Plate and Libbey-Owens-Ford.

Q. On or about October 12, did you receive any message from Libbey-Owens-Ford? A. Yes. We had quite a lengthy telegram from them telling us that because of their operational conditions they were entirely out of the market. They would not be able to supply glass or it was very indefinite when they would be able to supply any more.

Q. The original of that telegram, do you have it? A. No, I don't have it.

*Robert E. Weaver, for Defendants—Direct.*

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Mr. Lee: I would like to mark this for identification as Defendant Weaver Exhibit 30.

The same telegram was sent to all glass manufacturers, and I borrowed one of the original telegrams.

The Court: From whom?

Mr. Lee: Mr. Whicker.

The Court: From whom was the telegram?

Mr. Lee: From Libbey-Owens-Ford.

The Court: What does it have to do with this case?

Mr. Lee: It is just to refresh his memory that it is similar to the telegram he received.

The Court: He said he received it. He said there was a glass shortage and everybody said there was a glass shortage, and nobody has denied that there was a glass shortage. What is the use of cluttering up the record with that?

Mr. Lee: All right, then, we will withdraw Exhibit Defendant Weaver 30 for identification.

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Q. Do you remember the meeting at Asheville? A. Yes.

Q. Of the mirror manufacturers association? A. Yes, I remember it.

Q. Did you attend it? A. I did.

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Q. Who went with you? A. My wife, son. Also a nurse.

Q. What was your purpose in attending that meeting?

A. The main reason—in fact I had two reasons, I guess—One was to renew my associations among the various people that go to these meetings. Our suppliers were all there,

*Robert E. Weaver, for Defendants—Direct.*

of different materials. We see them at one time. Also knowing the shortage of glass, trying to find out what the actual status was from the plate glass manufacturers.

Q. What time did you arrive at Asheville, if you recall?  
A. I remember it was very late. In fact, I almost ran out of gas on the Parkway. We didn't get in there until around 8 o'clock. I don't know the exact time.

Q. I show you Government Exhibit No. 64, which is program of that meeting. Do you recall what you did Monday?  
A. On Monday that is usually the day when all the committees are in session. There is not much to do that day. I think I just roamed around the grounds with my family and called on the people that had exhibits there. That is all I remember doing.

Q. When did you see a representative of Pittsburgh Plate Glass?  
A. I don't recall the first time when I saw any of them.

Q. Did you receive any information as to the glass

1060

situation at that time when you did see them? A. Yes.

Q. What was it? A. It was going to be pretty tough sledding and that the glass was going to be very tight and everybody would be put on allocation and the allocation to be based on some previous month's shipments that you had gotten in other years.

1064

Q. Mr. Weaver, in 1955, the Government exhibit shows—Government Exhibit No. 36—Weaver Mirror Company sold more mirrors to furniture manufacturers in dollar volume than it did in 1954. Can you account for that? A. We were scrambling to get glass everywhere we



*Robert E. Weaver, for Defendants—Direct.*

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could. One of the things, Pittsburgh from time to time had a bad run of glass. I don't know whether they had it with the other customers, but several occasions we used several carloads of glass that was too bad for them to ship normally. Most of it had little black dots in it, about the size of a pinpoint or a little larger in some cases. The glass shortage was so critical that people would take mirrors like that, rather than have the furniture tied up on the tracks and paying demurrage on the cars, and we took in a lot of that glass and told our customers about it, and they took a chance on it and it went through. Some of it was so bad that we cut it down and made other sizes of it. That was one of the things. The other is that we got a little foreign glass in from France.

Another thing, there, on the wall mirrors, about 50 per cent of our business is wall mirrors, and 50 per cent or approximately goes to the furniture trade, and we had to quit selling wall mirrors and give that to our furniture trade.

Q. I show you a photostatic copy of a document supplied by Weaver Mirror Company to the Grand Jury, Roanoke, marked R 14-5, entitled "Mirrors For Retail Traders".

Mr. Karp: May I see it, please?

(Document handed to counsel.)

Mr. Karp: Thank you.

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Mr. Lee: I would like to have this marked for identification as Defendant (Weaver) Exhibit 30.

*Robert E. Weaver, for Defendants—Direct.*

By Mr. Lee:

Q. Does that represent your wall mirror business for 1953, 1954, 1955? A. Yes, I think that is what that is, retail trade.

Q. Would you read to the jury the three years involved?

Mr. Karp: Objection. It is not in evidence yet.

Mr. Lee: I offer it.

The Court: What is it?

Mr. Lee: It is a statement showing the retail wall mirror sales for Weaver Mirror.

The Court: Volume of sales?

Mr. Lee: Yes, sir.

The Court: All right, sir. What years?

Mr. Lee: 1953, 1954, 1955.

(Defendants' (Weaver) Exhibit No. 30, last above referred to, admitted in evidence.)

By Mr. Lee:

Q. Will you tell the jury the amount of those sales for those respective years? A. 1953, \$245,950; 1954, \$221,853; 1955, \$218,641.

Q. State whether or not the wall mirror business was profitable:

1067

A. Yes.

Q. You supplied furniture manufacturers during this period when it was short. Why did you do that when this was profitable. A. We felt like we were obligated most to our furniture customers than we were to wall mirror people because they had more at stake. They have to keep their plants running.

Mr. Lee: Witness with you.

*Robert E. Weaver, for Defendants—Cross.*

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*Cross examination by Mr. Karp:*

(For the Government:)

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Q. All right. Directing your attention to the Asheville meeting in October 1954, Mr. Weaver, you say you went down there to renew associations? A. Yes.

Q. When had you been to the Mirror Manufacturers Association meeting last? A. I don't recall.

Q. Had you been there the previous spring? A. No, I had not been there since 1952.

Q. When you say "renew associations," do you include the mirror manufacturers in the Southeast? A. They are included, yes.

Q. Did you see them? A. Some of them.

Q. You saw Mr. Messer? A. I think so.

Q. Mr. Gordon— A. Yes.

Q. —of PPG, and other representatives of PPG? A. Yes.

Q. Did you see Mr. Stroupe?

1071

A. Mr. Bob Stroupe?

Q. Yes. A. Yes.

Q. And you saw Mr. Hearn? A. I believe so.

Q. And you saw Mr. Buchan? A. I think so.

Q. Now, you testified that you talked about the price situation in the mirror manufacturing industry. A. I didn't say I talked about it. I said I heard a lot of talk about the low prices.

Q. Who did you hear the talk from? A. I not only heard it from people in the territory, but I heard it from all over the country.

*Robert E. Weaver, for Defendants—Cross.*

Q. Did you hear it from people in this territory? A. I guess so.

Q. Did you hear Mr. Buchan mention it? A. I don't recall having heard him.

Q. Did you hear Mr. Messer mention it? A. No, I don't recall any specific person.

Q. Did you hear Mr. Robert Stroupe mention it? A. I can't say specifically.

Q. Did you hear Mr. Hearn mention it? A. I wasn't around Mr. Hearn much. I don't recall talking to him.

1072

Q. Did you hear Mr. Gordon mention it? A. No.

Q. Did you hear Mr. Ketchum of the Pittsburgh Plate Glass mention it? A. No.

Q. Did you hear Mr. Burroughs of the Pittsburgh Plate Glass mention it? A. No.

Q. Did you hear Mr. Levell of the Pittsburgh Plate Glass mention it? A. No.

Q. So that you were there and you heard talk about it from mirror manufacturers, including the Southeast, but you can't recall who in the Southeast mentioned it. Is that your testimony? A. That is my testimony, because I don't remember three years back who—

Q. You don't remember? A. No.

Q. Is that your testimony? A. I don't remember who talked prices.

Q. Would you testify that any of these representatives from the mirror manufacturers did not talk prices with you on that occasion? A. How was that?

1073

Mr. Karp: Would you read the question?

(The pending question was read by the reporter.)

The Witness: From the mirror manufacturers?

*Robert E. Weaver, for Defendants—Cross.*

By Mr. Karp:

Q. From the Southeast, I mentioned. A. No.

Q. You would not say that they did not talk prices? A. They could have done it.

Q. They could have done it? A. Yes.

Q. You were interested in the price situation at the time? A. I certainly was.

Q. You were interested in raising prices? A. Yes.

Q. And you talked to mirror manufacturers about prices? A. Yes.

Q. Wouldn't it be logical for you to talk, if you talked to any mirror manufacturer about price, to talk to the mirror manufacturers from the Southeast? A. Not particularly.

Q. Why didn't you raise your prices a month earlier?

A. Why didn't I raise my prices a month earlier?

Q. Yes. A. The situation had not gotten as acute a month earlier

1074

as it was at the time of the Asheville meeting.

Q. What was the price situation a month earlier? A. Prices was low.

Q. And glass was getting short? A. It was getting short.

Q. Why didn't you raise your prices before you went to Asheville? A. We received this telegram from Libbey-Owens-Ford, as well as I recall—I am not sure about that—I think the first part of October. The first or second week in October. I don't remember the date on it. That is when things really looked bad. We had been getting glass from Libbey-Owens as well as Pittsburgh.

Mr. Karp: It would help us materially if we could be afforded photostats of the documents introduced by defendants.



*Robert E. Weaver, for Defendants—Cross.*

The Witness: What is the date of that?

Mr. Lee: He would not let me introduce it.

By Mr. Karp:

Q. October 12th. A. That is what I figured. Until this telegram came out the thing had not gotten to look so serious. After that telegram, and knowing that all the plate glass people would be at the meeting, I held off changing my prices until I went to this meeting to find out exactly what I could from both

1075

plate glass manufacturers, if there was going to be any easing up.

Q. You testified that you had a glass shortage for some time and the thing had gotten acute or would get acute on October 12, 1954. Why didn't you raise your prices on October 12 or October 13, 14, 15 or any day before the Asheville meeting? A. I just answered that, I think, by saying that it was only two weeks to the meeting in Asheville and I waited until then, until I got to the meeting, so I could hear and talk to both the plate glass manufacturers.

1078

Q. You were at the Asheville meeting and you talked to your competitors and you discussed prices, is that correct? A. I talked to all, everybody there in the way as competitors. We are all in the same business. I talked to 25 or 30 different ones.

Q. Why did you raise it to 78 per cent? A. Because I considered that was the price that should be put in effect. There were several prices mentioned. In fact, I had pressure put on me to go to 77, but I didn't do it.

*Robert E. Weaver, for Defendants—Cross.*

Q. Who put the pressure on you? A. Mr. Helms, my associate. He said he wanted 77. He didn't think 78 was enough.

Q. Why didn't you raise it to 77? A. We had a price in of 80 and that was around 10 per cent, and I thought a 10 per cent advance would be what it should be.

Q. If you raised it to 77 you would have gotten some competition pricewise from your competitors, is that correct? A. There would have been more chance of being competition. That was one of the things. The higher price you go the more chance of competition.

Mr. Karp: That is all.

The Court: Mr. Weaver, as I understand it, your

1079

company is a rather small company compared to some of these other companies that are defendants here?

The Witness: Yes, sir.

The Court: The prices were down before this raise in October, 1954, and the industry was in rather bad condition. It was not making any money, is that correct?

The Witness: Yes, sir. In fact, just before coming over here, I gave Mr. Lee my 1954 statement. I don't mind him showing it if he wants to, what we made in 1954 in the way of profit.

The Court: When you were at Asheville, did you not hear the talk up there that Mr. Messer and the Messer interests were going to raise prices?

The Witness: I don't think so, sir. No, sir. I don't recall it, if I did.

The Court: When you left Asheville, didn't you understand or have knowledge that this group of manufacturers in this area were all going to raise prices?

*Robert E. Weaver, for Defendants—Cross.*

The Witness: No, sir. I understood there was a lot of dissatisfaction with the present structure of the price at that time. I just heard it rumored around that everybody was unhappy with the present price situation.

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The Court: How would it happen that you sent out your letter on the 29th, the same date as all the other, with two exceptions?

The Witness: It so happened that is the first day I got back to the office, and I wanted to send out the price as soon as possible, and that is the first opportunity I had to do it, and that is when I did it. That was just a coincidence.

The Court: You did not hear at Asheville that these other manufacturers were going to 78 per cent discount?

The Witness: No, sir. I didn't even know it then until all this came out.

The Court: Mr. Weaver, if you were such a small concern, how did you expect to raise prices and leave yourself at the mercy of these bigger companies who would not raise prices?

The Witness: I was just taking a chance. I didn't have very many furniture customers at that time. The ones I had are pretty loyal.

The Court: You think they would remain loyal if they had to pay you more for mirrors than they had to pay somebody else?

The Witness: I was banking a lot on this glass shortage taking care of that, sir; because everybody's

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customers were crying for mirrors, the furniture business had boomed a little, and there was a short-

*Robert E. Weaver, for Defendants—Cross.*

age of glass all over. I knew they were having a hard time supplying—

The Court: You mean they felt they could not readily get the mirrors from your competitors even if the competitors' price was lower than yours?

The Witness: That is right, sir.

The Court: They could not readily get mirrors from them because of the shortage of glass?

The Witness: That was my reasoning.

The Court: I see. All right, sir.

By Mr. Karp:

Q. Why didn't you follow Mr. Helms' advice and go to 79 if that was the situation. 77, rather. A. I was leaving myself open a little too wide. They might have had a bad feeling after this glass shortage was over and maybe just left me if I tried to gouge them too much.

Q. You felt safe at 78. You felt safe against any such competitive reaction on the basis of 78 off? A. I felt that the furniture manufacturers felt that would be a fair price. They knew we were not getting enough for our mirrors as well as we did.

Q. You knew you could get away with a 78 per cent

1082

increase. When you left Asheville you knew that? A. No.

Q. You just took a chance? A. That is right.

Q. But you wrote the letter on the same day as all the others?

The Court: That is all in evidence.

The Witness: It seems I did, yes, but I didn't know that until all this came out at the trial.

The Court: I guess that is all Mr. Weaver, unless some of these other counsel want to ask you something.

*Colloquy.*

1083

Thereupon, The Court and Counsel retired to Judge's Chambers for a conference on the record, and the following proceedings were had:

Mr. Humrickhouse: Here is the situation we are confronted with at this time. We are now approaching the question of putting on the price study, and we have a lot of documents and so forth at the Hotel to bring over. We would like to request after the conclusion of the next witness that you adjourn for lunch and reconvene at 2 o'clock. We will be in position to go forward.

The Court: You are going to produce one at 2 o'clock?

Mr. Humrickhouse: A price study. For November, December, and January price study.

The Court: You are going to produce it?

Mr. Humrickhouse: Yes, sir.

The Court: You say you are going to be ready to go forward?

Mr. Humrickhouse: That will be up to your Honor.

Mr. Joyce: We are going to offer it.

Mr. Humrickhouse: We would like to have that much time. We know what your Honor has said throughout the trial.

The Court: How long is your price study going to take?

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Mr. Humrickhouse: You mean to proffer it?

The Court: No, not to proffer it. But to finish it?

Mr. Humrickhouse: I don't think it will take but a day or a day and a half.

The Court: I thought you might do it in an hour or two.



*W. C. Beeler, for Defendants—Direct.*

Mr. Humrickhouse: We may be able. That is the decision we will have to make at recess.

The Court: Of course, as I told you gentlemen repeatedly, I don't know whether the jury is going to pay attention to me, but when I get through, I am going to certainly wipe out everything you said and pretty near everything that has been produced on both sides and tell them to concentrate on that alleged Asheville, and on those letters and the meeting in The Bluffs.

Mr. Humrickhouse: If you do that, you will sustain our motion for a judgment as far as Pittsburgh is concerned.

Mr. Joyce: This next witness is not going to take very long.

Mr. Humrickhouse: We are not trying to take up your time. We are trying to speed it up for you.

The Court: I know that. You are trying to make a record of what you think is material in the case. That is where we differ, of course.

1086

W. C. BEELER, called as a witness on behalf of Virginia Mirror Company, Inc., being first duly sworn, testified as follows:

Mr. Joyce: If your Honor please, shall we proceed?

The Court: Yes, sir.

*Direct examination by Mr. Joyce:*

Q. You are Mr. W. C. Beeler who testified on Monday of last week, is that true? A. Tuesday.

Q. Tuesday of last week? A. Yes, sir.

Q. I believe you testified then that in October, 1954, you held the position of vice president of Virginia Mirror

*W. C. Beeler, for Defendants—Direct.*

1087

Company, and did you state what your duties were? A. In charge of production.

Q. How long had you held that position? A. At that time?

Q. At that time. A. Approximately two and a half years.

Q. What were your duties in reference to the use or acquisition of plate glass at the Virginia Mirror Company? A. That was one of my duties.

Q. To do what? A. Purchasing plate glass.

Q. Purchasing plate glass? A. Yes.

Q. What was your information or knowledge, if anything, in particular about the supply of plate glass in the early part of the month of October, 1954? A. By the early part of the month it had reached a very acute stage. At one time our company was behind approximately 16 loads of glass.

Q. Will you state to the jury what the reason for this situation was? A. At that time we did not know. It was a gradual tightening of glass where deliveries would fall behind and the amount that was behind would not be made up on the next deliveries.

1088

Q. Do you mean by that the suppliers of plate glass were not supplying it as fast as you ordered it? A. They were not supplying it as fast as they accepted the orders.

Q. Had you had any explanation of that, Mr. Beeler? A. We had had various explanations, yes, and all of a temporary nature.

Q. What was the situation with reference to your receipt of orders for mirrors made from plate glass at that time? A. It was increasing.

Q. Did you supply any appreciable quantity of your mirrors to the furniture manufacturing industry? A. Yes, sir, we did.

*Raymond B. Pearce, for Defendant—Direct.*

Q. Where did you get your supply of plate glass in October? Where were you getting it in October, 1954? A. From Libbey-Owens-Ford Glass Company, from Pittsburgh Plate Glass Company, and we were importing glass.

Q. You were importing glass? A. Yes, sir.

Q. Where did you import it from? A. From Belgium, France, Germany, England.

Q. Were you able to get as much glass as you desired from these foreign countries? A. No, we were not.

1140

RAYMOND B. PEARCE, called as a witness on behalf of Pittsburgh Plate Glass Company, being first duly sworn, testified as follows:

*Direct examination by Mr. Humrickhouse:*

Q. Please state your name, residence, and occupation? A. R. B. Pearce, Greensboro, North Carolina, a certified public accountant.

Q. With what firm are you connected? A. A. M. Pullen & Company.

Q. What is the nature of that firm's business? A. Practicing certified public accountants.

Q. Where are their offices located? A. In Richmond, Virginia, Greensboro, North Carolina, Winston-Salem, North Carolina, Charlotte, North Carolina, Fayetteville, North Carolina, Raleigh, North Carolina, Atlanta, Georgia, New York, and Danville, Virginia.

Q. Mr. Pearce, give his Honor and the gentlemen of the jury your educational background, please. A. I am a graduate of the Greensboro, North Carolina, high school, and completed correspondence courses in accounting with the International Accounting Society of Chicago.

*Raymond B. Pearce, for Defendant—Direct.*

Q. How many years' experience have you had in accounting or public accounting? A. Twenty-six in public accounting.

1141

Q. When did you receive a certificate as a certified public accountant and in what jurisdiction? A. In 1934 I received a certificate from North Carolina, and 1943 in Virginia.

Q. Are you a member of any societies? A. I am a member of the American Institute of Certified Public Accountants, the American Association of Accountants and the North Carolina Association of Certified Public Accountants.

Q. How long have you been in Greensboro with A. M. Pullen & Company? A. Since 1931.

Q. What is the nature of your connection with them at present? A. I am a general partner and manager of the Greensboro office.

Q. Mr. Pearce, will you state the nature of your employment in this case? A. I was employed to make an examination of the records of the seven defendant companies in order to determine the prices at which plate glass mirrors were sold to furniture manufacturers for the period from January 1, 1953, to March 31, 1957.

Q. Would you state what records you examined in carrying out this assignment?

1142

A. Copies of the companies' invoices to the customers, copies of the customers' orders, customers' correspondence files, which had other memoranda in them, the accounts receivable ledger cards, that is the individual to customers where available, cash receipts records of the various companies, and in one case the general ledger accounts showing the sales of that company.

Q. Did you make an examination of the records of all of the defendant companies for the months of October, Novem-

*Raymond B. Pearce, for Defendant—Direct.*

ber, and December, 1954, and January, 1955? A. Yes, with the exception that the examination of Virginia Mirror Company didn't—started with October 5th because of the absence of the order files prior to that date.

Q. Then with reference to the examination during those months, what records did you go over and analyze? A. The sales records, customers' purchase orders. By sales records, I mean sales invoices. The customers' purchase orders. The cash receipt book.

Q. Did you examine these records for each of the defendant companies? A. Yes, sir.

Q. In connection with the defendant Pittsburgh Plate Glass Company, did you examine records at more than one point? A. Yes. At High Point and at Roanoke.

1143

Q. Why was that? A. They had separate books at Roanoke at a separate warehouse at Roanoke. The books were kept separately for the mirror business.

Q. Now, Mr. Pearce, as a result of your examination of these records which you have outlined, did you prepare schedules or summaries? That is, did you and those working under your direct supervision prepare schedules and summaries showing the price information which you had gathered? A. Yes.

Q. How many people were working under you? A. Thirteen.

1144

Q. Were you in direct charge? A. Yes.

Q. What do these schedules or summaries which you have prepared for these months show? A. They will show the individual orders accepted and the discount off the list on which the price was based, the name of the customer, the amount of the order, and a summary. There is also a schedule that will show the total volume in dollar sales



*Raymond B. Pearce, for Defendant—Direct.*

during the month separated to at above announced price, at the announced price, below the announced price, and undetermined. That is, that undetermined is at a price that did not relate to the list as I can figure out the relation to the list.

Mr. Humrickhouse: I have placed on your desk an exhibit that I would like to mark as Defendants' Exhibit 34. This is for all defendants. I have copies for all gentlemen, and if the Court would like to have one at this time, I have one here. I have given the Government two copies, and I don't have any additional ones.

By Mr. Humrickhouse:

Q. I show you Defendants' Exhibit No. 34, for identification, and I will ask you to look at it and see if you can identify it. It is composed of a number of sheets. I would like for you to say what the separate sheets

1145

are so that the Court and the jury will know what the exhibit is composed of. A. The first is Carolina Mirror Company, a detailed listing of the plate glass mirror orders received in the month of November 1954.

Q. What is the next one? A. The next one is Galax Mirror Company, the same information on it, detailed listing of plate glass mirrors for the month.

Q. And the next one? A. Pittsburgh Plate Glass, Roanoke warehouse, similar information.

The next one is Pittsburgh Plate Glass High Point warehouse, similar information.

Stroupe Mirror Company, similar information.

Virginia Mirror Company, similar information.

The last sheet—

*Raymond B. Pearce, for Defendant—Voir Dire.*

Q. No. A. Excuse me. I skipped one. The next one following Virginia is the Weaver Mirror Company.

Mr. Humrickhouse: If your Honor pleases; I offer this exhibit in evidence.

Mr. Carlson: If the Court please, may we ask some questions on *voir dire* about the documents that have been prepared. We are going to object to the

1146

admission.

The Court: Yes.

*Voir Dire examination by Mr. Carlson:*

(For the Government:)

Q. First, you described one part of this record as a discount column. Do you distinguish between trade discount and cash discount here, or did you throw them all in together? A. The first item is the discount on which the invoice price is figured. The second item is the discount allowed at date of payment. The mark beyond the dash, sir. May I have one of them?

Mr. Humrickhouse: Would it be satisfactory if I hand him one of our copies?

Mr. Karp: Surely.

(Document handed to witness.)

By Mr. Carlson:

Q. You also show some material here as to the Pittsburgh Plate Glass Company, High Point warehouse. Did you prepare another listing on this very same subject matter? A. For this month?

Q. Yes, for the month of November 1954. A. Not to my knowledge.

*Raymond B. Pearce, for Defendant—Voir Dire.*

1147

Q. Did you take the figures on here directly from the company records? A. The figures were taken off the company records by me and to a card record and then put on the schedules.

Q. You personally took the material from the company records, put it on the card records, then put it on the schedule? A. I personally took the records from the company and put it on the card records. This schedule was prepared under my supervision, but I did not make the schedule myself.

Q. So these schedules are not really based on records of these companies, is that correct? A. Yes, sir.

Q. Let me see if I understand you, sir. You took material from the company records; then what did you do with it? A. I put it on a McBee card to get the information readily available for summaries.

Q. And then from the McBee cards you put it on these? A. That is correct. It may have gone through a separate summary, but the information is on the McBee cards that is on these schedules.

Q. So the material going from the company records to these schedules passed through an intermediate source, is that correct?

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A. That is correct.

Mr. Carlson: If the Court please, I think these records should not be permitted in evidence for several reasons. First, there is a duplication in at least one instance of material that has already gone in evidence. Second, by the witness' own statement they are not found on company records at all, as is required of this kind of record.

The Court: The objection is overruled.

*Raymond B. Pearce, for Defendant—Voir Dire.*

Mr. Humrickhouse: Then, your Honor will receive the exhibit?

(Defendants' Exhibit No. 34, last above referred to, admitted in evidence.)

By Mr. Humrickhouse:

Q. My attention has been called by my associates, Mr. Pearce, that in going over these different ones, you did not mention Mount Airy. That was included? A. That is included. Excuse me.

Q. That is all right, sir. All are schedules of sales of plain and plate glass mirrors for all of the defendant companies during the month of November included in this exhibit? A. Excepting sales for less than five mirrors and orders in which the definite date that the order was

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accepted was not clear from the records. These exhibits would have a note on them which I did not read, which says, "The above listing does not include orders for which the exact date was undetermined."

Mr. Humrickhouse: I understand your Honor has admitted the exhibit.

The Court: Yes.

Mr. Pearce, did you make up any statement showing discounts at which sales were made prior to November 1st?

The Witness: Yes, sir.

By Mr. Humrickhouse:

Q. Mr. Pearce, I hand you Defendants' Exhibit No. 35 for identification, and ask you if you can identify the paper? A. That is a schedule that I had prepared.

*Raymond B. Pearce, for Defendant—Voir Dire.*

Q. What is it? A. Schedule of dollar volume of plate glass mirror orders at above announced price, at announced prices and below announced prices, by defendant companies, for the month of November, 1954.

Mr. Humrickhouse: We offer that in evidence, if your Honor please, Defendants' Exhibit No. 35.

Mr. Carlson: If the Court please, the Government objects to the introduction of this exhibit as well.

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Again there is no way to test the accuracy of the exhibit. The records are not here in court. This is a self-serving statement of what certain records may or may not show.

The Court: The objection is overruled.

(Defendants' Exhibit No. 35, last above referred to, admitted in evidence.)

The Court: Mr. Pearce, this is schedule of dollar volume of plain plate glass mirrors, at above announced prices, at announced prices and below announced prices by defendant companies for the month of November 1954. Do you have this paper in your hand?

The Witness: I will have one in my hand, sir.

The Court: What do you call announced prices?

The Witness: Announced price is based on the letters to the customers in effect in November.

The Court: What letters?

The Witness: The price announcements to the customers.

The Court: You say the letters. What date?

The Witness: I should not have said that. It really came from a schedule that came from the impounded documents showing the prevailing price at



*Raymond B. Pearce, for Defendant—Voir Dire.*

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that time, and also from information I had in my files which consisted of copies of certain letters, yes, sir.

The Court: That still does not answer my question. The testimony in this case is that all of these defendants—corporate defendants—sent out a letter on October 29, with two exceptions, and those letters were on October 30 and November 1, in which they announced a discount price of 78 per cent.

The Witness: Yes, sir.

The Court: Is that the announced price that you were figuring on?

The Witness: That is correct.

The Court: All right, sir. Look where you say Galax, at the announced price you say they sold \$42,355.93.

The Witness: Yes, sir.

The Court: And below it they sold \$58,915.57. Isn't that what you say?

The Witness: Yes, sir. 77 cents.

The Court: The schedules you handed in here a minute ago showed that Galax did not make but three sales at a discount above 78 per cent during the entire month.

The Witness: 78 and 5, sir. 78, 10 and 2. 80 and

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10, 78 and 10. 78 and 10. 78 and 10. There are more sales than the three. The dollars involved in those sales are rather substantial.

The Court: Those tens were trade discounts for payment time?

The Witness: No, sir.

The Court: You said a few minutes ago they were.

*Raymond B. Pearce, for Defendant—Voir Dire.*

The Witness: That beyond the dash on the schedule, Judge. If you will notice the 70 and 10-2, instead of working 80 off this, they are working 78 off this. Get the result, and take 10 off that.

The Court: Let us see now. On this last list you handed me here, you say that Mount Airy sold \$10,578.20 at the announced price and \$2,126.75 below it. If you will look on your first list that you presented here you will see that Mount Airy did not make a single sale at discount over 78 per cent, except one, and that was for \$60.79.

The Witness: Judge, the announced price is 78 and 2 per cent cash discount. If they allow 78 and 5, it was lower.

The Court: That is only one case.

The Witness: No, sir. The 78 and 5 goes down the line, sir.

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The Court: Then you told me a few minutes ago that everything had a dash before it was a price discount for prompt payment.

The Witness: I said it was a cash discount, but it is still below the announced price of 78-2, the announced price.

The Court: There was no such announced price. The announced price was 78 per cent.

The Witness: I believe the record will show that it is the custom whether it is in the letter or not.

The Court: I do not know anything about what the custom is. Apparently your lists are not accurate here. Mount Airy gave a discount of 78 per cent all the way through. In some cases they gave a trade discount of 5 per cent, or what you refer to as a trade discount of 5 per cent, and in some cases 2 per cent. I think your statement is misleading.

*Raymond B. Pearce, for Defendant—Voir Dire.*

The Witness: It says at or below announced price, sir.

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Mr. Humrickhouse: May I call Your Honor's attention to the fact that the Mount Airy and Galax letters, which are already in evidence, do say two percent discount? They do say 78 percent off the list and two percent cash discount.

The Court: The letters?

Mr. Humrickhouse: Yes.

The Court: All right, sir.

Mr. Humrickhouse: I think the witness is correct in his statements from the exhibit.

The Court: I did not remember that was in them.

Mr. Humrickhouse: I have a copy of the Galax Mirror Company letter.

Mr. Carlson: If the Court please, I think that in every case that is a cash discount, as your Honor has observed. It is not a trade discount as this piece of material would purport to show.

The Court: I do not know. A 78 percent discount is a discount from a list price. Then, as I understand, these manufacturers, like most lines of business, give a further discount for prompt payment. Two percent for cash and five percent within 30 days, and that is the common practice.

I do not know whether you call it a trade discount or what you call it. What is it? What would you call

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it, some of you people who know?

Mr. Gilmer: The last figure on there, the two, is the cash discount for prompt payment, your Honor. The other is part off the list. For instance, when it is 78 and 10, that is the same thing as 80, except two percent. There is two percent difference.

*Raymond B. Pearce, for Defendant—Voir Dire.*

o The Court: I realize that.

Mr. Gilmer: Between quoting 78, 10 and 2, means approximately 80 off the list and a two percent cash discount.

Mr. Gibson: If your Honor please, you may recall that Mr. Beeler testified that the two percent supposed cash discount was always allowed whether or not the payment was prompt. So it was added to the price. In the case of the letter, Virginia Mirror announcement, Government Exhibit No. 30, the announcement did refer to a two percent discount. These prices are shown in this exhibit for Mount Airy as five percent discount.

Mr. Carlson: If the Court please, the cash discount never enters into the price.

Mr. Humrickhouse: If your Honor please, your Honor asked the question of the witness and I called your Honor's attention to the fact that the letters stated what the witness said. It seems to me that is sufficient. The letters show a 78 percent off the list, plus a two percent

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discount, and that any additional discounts are taken into consideration by the witness. That is all the witness has said. That is all his exhibit tends to show, that it is the difference from the quoted price in the letters.

The Court: What I do not understand is in some of them you put 78 and 10. Now someone just said that is exactly the same thing as 80 percent discount. I do not see where it is.

Mr. Gilmer: Approximately. It is about two-tenths of one percent.

The Court: What?

*Raymond B. Pearce, for Defendant—Voir Dire.*

Mr. Gilmer: About two-tenths of one percent difference is all in saying 78 and 10 and saying 80 off the list.

The Court: Is 78 and 10 the same thing as 80?

Mr. Gilmer: Practically. For all practical purposes it is the same thing as 80. It is just a shade different.

Mr. Lee: If your Honor please, you will recall it is in the evidence from witness Helms that the regular discount of Weaver was supposed to be 78, too, but to meet competition at Stanley, they had to increase it and make it 78-5. So that was a deviation.

Mr. Carlson: I don't recall any such testimony, your Honor.

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The Court: 78-5 is the cash discount. It is not the regular discount from list price. It is the cash discount. That is why I say that I think these statements are misleading.

In a great many instances they count that cash discount in there as being sales under the announced price.

The Witness: I think that is correct. I think the amount realized was under the announced price.

The Court: But it was due to a cash discount.

The Witness: It was due to a discount allowed or booked at date of payment. The distinction, if I may draw it here, sir, is that the first column is on the invoices figured on the net price on the invoice. It would be 78 off the invoice price when it is computed.

The Court: Yes.

The Witness: At the top of the invoice they may have two percent 30 days terms. But at date of pay-



*Raymond B. Pearce, for Defendant—Voir Dire.*

ment, by agreement, there was allowed a five percent reduction rather than the two off that amount.

The Court: Yes, sir.

The Witness: It made the amount realized from the sale of the mirror what we show it was on this schedule rather than based on the list.

The Court: Yes, the amount realized would be the

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accurate one. I do not question that. But the summary there indicates that the discount of 78 percent—the announced price—was not observed in the majority of cases. For instance, in the case of Carolina, I think, the greater volume was below the announced price.

The Witness: That is correct, sir.

The Court: That is true of every sale if you take the two percent off.

The Witness: No, sir. Where it is 78 and 2, it is not below the announced price. 78 and 2 is the announced price.

The Court: It would be below 78 percent. That is what I am talking about.

The Witness: It is below 78 and 2, sir, not below 78.

Mr. Humrickhouse: And the announced price is 78 and 2.

The Court: All right, the announced price is 78 and 2. Where does this five percent come in?

The Witness: That is an extra allowance beyond the announced price.

The Court: Is it based on prompt payment?

The Witness: Not necessarily.

The Court: What is it?

The Witness: It is evidently based by agreement,

because when the check comes in it is deducted. It does not have to be deducted in 10 days. It is deducted in the general course of business. That is in this particular case.

The Court: Why doesn't it apply to all of them if it doesn't have anything to do with date of payment?

The Witness: Sir?

The Court: Why doesn't it apply to all these orders if it doesn't have anything to do with date of payment?

The Witness: It was not allowed to that particular customer. It is a term of the sale, sir. I will sell you this at 78 and give you five percent when you pay it.

The Court: You mean there is discrimination between customers?

The Witness: It is a subject of negotiation between customers. I wouldn't know it as discrimination.

The Court: One man gets five percent off and another gets two percent off, so it looks to me as if there is some discrimination.

The Witness: There is a variation of prices all the way through, sir.

Mr. Humrickhouse: Has your Honor admitted Defendants' Exhibit No. 35 in evidence?

The Court: Is that this?

Mr. Humrickhouse: Yes.

The Court: Yes.

Mr. Humrickhouse: You may cross-examine.

*Raymond B. Pearce, for Defendant—Cross.*

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*Cross examination by Mr. Carlson:*

(For the Government:)

Q. Do you know anything about the size of these companies involved on these various lists, Mr. Pearce? I mean the customers, not the selling companies? A. No, sir, not except to the extent of the dollars that they bought. I have no idea about their size.

Q. Do you know anything about the identity of those companies? A. Name and address, sir.

Q. Do you know anything about the stock ownership of the customer companies involved in these lists? A. Not to my own knowledge. I have heard that Galax had a company there that is owned by the Messer interests, sir.

Q. Which one is that? A. That is the Webb Furniture Company. I don't know whether they are in that list or not.

Q. Did you know that Virginia Mirror Company owns stock—substantial stock—in one of the companies listed on the Virginia Mirror? A. No, sir.

Q. Did you know that the president of the Virginia Mirror Company was a director of one of the companies you

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have listed here? A. No, sir.

Q. Were you told or were you not told whether or not special discounts were given in cases of family relationships or otherwise? Did your instructions include with respect to that? A. No.

Q. Observing the Galax list, you will note there is a customer called on there B. F. Huntley. B. F. Huntley, is that what it represents? A. Yes, sir.

Q. Winston-Salem? A. Yes, sir.

*Raymond B. Pearce, for Defendant—Cross.*

Q. In your examination of the records of Galax Mirror Company, did you find underlying orders for B. F. Huntley that preceded the date covered by this listing, pursuant to which orders appearing on here were shipped? A. No, sir.

Q. Did you make an effort to find anything such as that? A. We had an order on the file showing the date and the date is correct as shown on here. The order would be dated in November. It was shown in November. We have nothing on that list that does not show an order date in November.

Q. Did you determine that there would be no order

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date shown for a previous order on the order date that you took? A. I don't understand the question, sir.

Q. You observe on here certain order dates, did you not? A. That is right.

Q. Those were the dates appearing on a particular piece of paper called a purchase order, were they not? A. That is correct.

Q. Did you determine in the case of each one of these purchase orders that you examined whether or not there was another purchase order prior to that time pursuant to which the new purchase order was issued? A. No.

Q. That could have happened as to many of these now? A. That is right.

Q. I note a customer on here of Virginia called American Furniture Company. Do you know what the size of that company is? A. No, sir.

Q. Do you know where they are located? A. They are located in Martinsville.

Q. Do you know where Virginia Mirror Company is located? A. In Martinsville.

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Q. Where in this set of listings are matters of correspondence taken in? For example, should you have a correc-

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*Raymond B. Pearce, for Defendant—Cross.*

tion of a particular invoice to a different price, where do you take that into consideration on this piece of material here, and how do we find out what it is? A. That is part of the compilation. It goes from the invoices to a card record which I have here in Roanoke in the files in the hotel for each invoice. If there is a credit memorandum or price adjustment on that invoice, it is related to that card. The price involved in this is the final price.

Q. Did you show both invoices in this? A. No, not if it were a corrected invoice. You said a credit memorandum or price adjustment. It would be only one shipment against it.

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Q. Mr. Pearce, where do I find the order number on this sheet, or how do I know what order you are referring to when you give some particular date? A. The order is part of the underlying records. It is not on that schedule.

Q. Where are the underlying records for the Huntley material that goes into the Galax list? A. The underlying records that I used in the preparation of that schedule are in town at the Roanoke Hotel right now. The original invoices, I understand, are in town. They were brought here by the Galax Company people.

Q. When I speak of underlying records, I am talking about records of the company, not something you may use in your compilations, whatever they may be. A. To my own knowledge, I do not know, but I wrote to the attorneys for each of the people telling the records that I had used and suggested that they be here. I believe they are, but not to my own knowledge I would not say.

Mr. Morison: I would like to announce, your Honor, that the Galax records, as I told the Government at the beginning of the trial, are here. All of the supporting documents that Mr. Pearce is speaking of are here in the hotel.



*Raymond B. Pearce, for Defendant—Cross.*

Mr. Gilmer: Your Honor, we notified Government counsel, as you will remember, the first day of the trial

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that those records are here and your Honor said that the Hotel Roanoke would be a satisfactory place to leave them and Government counsel knows that.

The Court: I don't think I expressed anything at all. I did not say it was a satisfactory place. I said I did not want them encumbering my office.

Mr. Gilmer: Yes, sir. You asked us where they were, and we gave the hotel numbers for each company and what room numbers they were.

The Court: Yes, indeed, you did. I think I said, "All right."

Mr. Gilmer: Yes, sir. We understood it to mean that they were all right where they were.

Mr. Lee: If it please your Honor, the Weaver Company records are in the record. They have been introduced in evidence and are available to the Government.

Mr. Karp: If your Honor please, when statements were made about thousands and thousands and thousands of pieces of documents being available, somewhere in town, we were then here on trial and we had testimony to put on and witnesses to put on and a Court and jury waiting to hear them.

The Court: Yes, sir.

Mr. Karp: We made it very clear that we had no opportunity to go through those thousands of records under

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those circumstances. Moreover, your Honor, we did not have these so-called summaries or lists or tabulations. Now we have them.

*Raymond B. Pearce, for Defendant—Cross.*

The Court: Yes, sir.

Mr. Karp: This witness has been asked by Mr. Carlson whether in putting down these orders and these dates he considered underlying orders and he said no, as I recall. Now we want to call upon him to tell us just which orders with respect to Huntley of Galax Company he looked at in determining the time of the order and the circumstances of the order and the price under the order.

The Court: He has the orders listed there. Those are the ones he looked at.

Mr. Karp: No, your Honor, the witness said that he did not consider whether those orders were based upon previous orders, and we don't have those prior orders here. However, Mr. Carlson does have here a carbon copy of one such prior order—a photostat—and he would like to examine the witness on that basis, if he may, just to test the credibility of these summaries that have been put in here.

The Court: All right, sir.

Mr. Lee: May I add to the little Weaver Mirror Company, all our records are here from January 1, 1953

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up until March 1957, and they are in evidence, so Mr. Karp cannot complain of that.

The Court: All right, sir.

Mr. Carlson: I think it is pretty clear, too, that summary shows 78 percent as to Weaver.

The Court: What order is it you are talking about?

Mr. Carlson: I was talking about the summary Mr. Lee was referring to.

Mr. Lee: I don't know what summary he refers to. The one I have shows 80 and 5, 80 and 5, 80 and 5, 78 and 2, 78 and 5.

*Raymond B. Pearce, for Defendant—Cross.*

Mr. Carlson: Omitting reference to the dates, the dates for the first three matters were 11/2/54.

Mr. Lee: Yes, sir, and the last one of 78 and 5 was 11/18/54.

By Mr. Carlson:

Q. Were you told or advised or did you find records during your examination of the Galax material that gave you to know that on November 1, 1954, B. F. Huntley Company placed an order for some 8000 plates which were shipped thereafter? A. On some copies of B. F. Huntley's records that were furnished me to cross-check our records with respect to Huntley, I found inventory sheets which indicated on Huntley records so many dollars, but I had individual orders dated in November for the items that were on that list.

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Q. Knowing that, did you check the sizes on the later orders to see if they were the same sizes covered by the underlying order? A. Yes, sir. The orders for the sizes were checked. The size was checked. The order was for a specific size. Each order as we use it was for a specific size.

Q. And you considered each one of those a new order even though covered by an underlying order, is that right?

A. I have no knowledge of any underlying orders.

Q. Just one or two more questions, Mr. Pearce. Are we able to tell from this schedule which of these particular orders these are supposed to represent that are back orders, if any? A. Not unless it was indicated on the copy of the order, no. The invoice referring to the shipment under the order, if the order showed that size, we would not go back for any back order. We would not go back to see if there was any back order or not.

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*Raymond B. Pearce, for Defendant—Cross.*

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Q. Are you able to tell from this particular bunch of sheets whether any of these orders are for replacement for breakage? A. Yes, sir, in reverse. The invoices covered replacement of breakage were left out of our schedule when the invoice so indicated.

Q. If it did not indicate it? A. We would not know.

The Court: Are you finished with this witness?

Mr. Carlson: I have just one question I want to ask him, your Honor.

By Mr. Carlson:

Q. Supposing you referred back to an underlying order, assuming one did exist, could you tell what that meant in the light of these sheets? A. Yes, sir.

Q. Did you take it into account here as a possible presence of underlying orders? A. No, sir.

Mr. Carlson: That is all, your Honor.

The Court: In this tabulation, the first column where it has date, is that the date received or the date of the order sent in by the customer?

The Witness: It is the customer's order date, generally.

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The Court: How did those orders come in mostly, by letter?

The Witness: They came in by order form. Most of the customers had an order form that came through the mail. I assume they came through the mail. There was not a receipt stamped on them to note that. It may have been with some other documents. But it looked like it came through this mail.

The Court: The date refers to the date by which the order was dated by the clerk?

*Raymond B. Pearce, for Defendant—Cross.*

The Witness: That is right.

Mr. Humrickhouse: Would your Honor permit me one question, please? It is not a question. I would like to read to the jury Defendant Exhibit 35 in summary, just the total amounts, since they have not been read to them. I think they are entitled to know what the exhibit shows. It is a schedule of dollar volume of plain plate mirror orders at above announced prices, at announced prices and below announced prices by defendant companies for the month of November, 1954.

Totals, above announced price, \$670.54. At announced price, \$121,917.70. Below announced price, \$335,627.38. Undetermined, \$56,490.40. Or a grand total of \$514,706.02.

We have no further questions.

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The Court: All right, Mr. Pearce, I guess you may stand aside, sir.

Witness excused.

The Court: We will take a recess at this time.

(A short recess was taken.)

Mr. Humrickhouse: As I understand, the Government wanted Mr. Pearce to return.

Mr. Karp: I think it is all right to go ahead, but we would like to reserve the right to call him. We may have had enough. We may have another document we may want to show him.

The Court: What is this being said?

Mr. Humrickhouse: We understood that during the recess the Government notified Mr. Pearce that they wanted him back. I was inquiring if they did before I call the next witness.

The Court: What was the answer?



*Almarin Phillips, for Defendant—Direct.*

Mr. Humrickhouse: The answer was, "we don't know." So I call Dr. Phillips.

Mr. Karp: The answer was that we might want to call him back after we see all this stuff.

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ALMARIN PHILLIPS, called as a witness on behalf of Pittsburgh Plate Glass Company, being first duly sworn, testified as follows:

*Direct examination by Mr. Humrickhouse:*

Q. Please state your name, age, residence, and present occupation? A. My name is Almarin Phillips. I am 32 years of age. Resident of Albemarle County, Virginia. I am associate professor at the Graduate School of Business Administration of the University of Virginia.

Q. What courses do you teach there, Dr. Phillips? A. I teach a general introductory course in economics, which also treats of the political, sociological framework of business. I teach some statistics and finance.

Q. Will you please tell his Honor and the gentlemen of the jury your educational background, sir. A. Yes, sir. I was educated in the public schools of Port Jervis, New York. I attended the University of Pennsylvania, the Wharton School of Finance and Commerce, and received a Bachelor of Science degree in economics there in 1948. I continued at the University of Pennsylvania after that and received a Masters degree in economics in 1949 from the Graduate School of Arts and Sciences. I went to Harvard University in 1950 and received a Phd. in economics

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from that university in 1953.

Q. That means a Doctor of Philosophy degree, doesn't it? A. Yes, sir.

*Almarin Phillips, for Defendant—Direct.*

Q. What did you do after you received that degree?

A. I was appointed an assistant professor at the Wharton School at the University of Pennsylvania and taught there until the spring of 1956.

Q. So how long have you been in Albemarle County at the University of Virginia? A. I have been in Albemarle County since the fall of 1956.

Q. Dr. Phillips, have you authored any articles on economics or statistics? A. Yes, sir.

Q. How many would you say? A. Eight or nine, sir.

Q. To refresh your recollection in case you don't have the names of all of them before you, I hand you a list that purports to be some of your writings and ask you if that does refresh your recollection? A. Yes, it does, sir.

Q. Will you tell us just a few of them, not all of them?

A. Yes, sir. In June of this past year I was author of an article entitled, "Mergers, Interpreting the New

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Developments." That appeared in Business Scope Magazine. In June of this year, an article appeared in the Virginia Law Review entitled, "Price Discrimination and the Large Firm, Hobson's Choice in the Pectin Industries."

In January of this year, I was co-author of a chapter in a book entitled, "Problems in Capital Formation," which was published by the Princeton University Press. In January of this year, a pamphlet of mine entitled, "Automation," appeared.

Q. I think there is enough of this. Tell me if you belong to any professional societies? A. Yes, sir. I belong to the American Economic Association, the American Statistical Association, the Econometric Society.

Q. Are you on the staff of any magazines or publications? A. I was editor of the American Statistician from the period 1953 through 1956 and am now associate editor of it.

*Almarin Phillips, for Defendant—Direct.*

Q. What is the American Statistician? A. The American Statistician is a publication of the American Statistical Association which is a national society for people who work in statistics.

Q. Have you ever testified in court or before any legislative committees or executive bodies? A. I have never testified in court, sir. I have

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testified before the House of Representatives Select Committee on Small Business and before the United States Tariff Commission.

Q. Dr. Phillips, have you been engaged by the defendants in this case to make a study of plate glass mirror prices? A. I have, yes, sir.

Mr. Humrickhouse: Excuse me. Would ~~you~~ like to examine him on his qualifications?

The Court: No.

Mr. Karp: I don't see the relevance of such examination.

Mr. Humrickhouse: I think it is proper to give such an opportunity.

The Court: Be quiet, please. I am answering for him.

Mr. Humrickhouse: Thank you, sir.

By Mr. Humrickhouse:

Q. Dr. Phillips, I show you Defendants' Exhibit 34 and Defendants' Exhibit 35, and ask you to glance over those sheets and see if you are familiar with those summaries and schedules? Look at them first, please, because they are more than one. A. Yes, sir. I am familiar with all of these.

Q. Have you made a study of those specific schedules? A. I have. In fact, I requested the Pullen Company

to prepare these schedules.

The Court: You requested the Pullen Company to do what?

The Witness: To prepare these schedules, your Honor.

Mr. Humrickhouse: We would like this marked for identification as Defendants' Exhibit No. 36.

By Mr. Humrickhouse:

Q. Dr. Phillips, I show you Defendants' Exhibit No. 36, and ask you to identify it and say what it is. A. This is a chart which I had prepared based on the schedules in hand. It is a chart which is designed to indicate the prices—

The Court: Would you lower it a little? I cannot hear the witness. Let him talk over it so I can hear him.

The Witness: The charts indicate the prices which furniture manufacturers paid mirror manufacturers on mirror orders received during the month of November, 1954.

Mr. Humrickhouse: It is prepared by the schedules?

The Witness: Yes, sir.

Mr. Humrickhouse: We offer the chart in evidence, your Honor.

Mr. Karp: We object on the ground it is immaterial.

and irrelevant.

The Court: This is simply a chart reflecting that statement?

The Witness: Yes, sir.

*Almarin Phillips, for Defendant—Direct.*

The Court: Dr. Phillips, I say you have gone to a lot of trouble and traveled a good deal of distance to put in chart form what is already in those papers.

Mr. Humrickhouse: Your Honor will admit it in evidence then?

The Court: Yes, you can leave it up there.

Mr. Humrickhouse: All right, sir.

Defendants' Exhibit No. 36, last above referred to, admitted in evidence.

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By Mr. Humrickhouse:

Q. Defendants' Exhibit No. 36, you have just said what it is.

Mr. Humrickhouse: May the witness step down from the stand and go to the chart, your Honor?

The Court: Yes, sir. I do not guarantee that I am going to let him testify, but he can step down.

By Mr. Humrickhouse:

Q. I would like you to explain from the chart what the key there is. A. The key on the chart, sir, indicates for each company the colored dot which refers to the price and date of a mirror order. So that we show here, for example, Carolina as red; referring to the chart, then, any red dot on the chart would indicate a date and a price at which an order was taken by Carolina from furniture manufacturers.

Q. You show colors for the others. Will you read those to us? I can't see them from here. A. Yes, sir. Galax is yellow, and they appear this way. Mount Airy Mirror is blue, and they appear that way. Pittsburgh High Point warehouse are black circles, which appear this way. Pittsburgh Roanoke warehouse are black stars. Stroupe Mirror Company are gray circles. Virginia Mirror Company, green circles. The Weaver Mirror Company, brown circles.



*Almarin Phillips, for Defendant—Direct.*

Q. What are the numbers on the bottom of the chart, sir?

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A. The numbers on the bottom of the chart, sir, are the dates in the month of November that these orders were taken.

Q. What do you mean by "orders taken"? A. I mean by "orders taken," these represent the days on which the furniture manufacturers received a letter or telephone call—pardon me—a mirror manufacturer received a letter or telephone call from a furniture manufacturer indicating that he would like to buy mirrors. It is to distinguish it from shipments, principally. This is not shipments in November. It is the orders in November.

Q. Did you in your investigation ascertain that each of these orders represented by one of the colored dots that the shipments did actually occur? A. Yes, sir. The A. M. Pullen Company did that work.

The Court: He asked did you ascertain that.

The Witness: I did not. I relied on the A. M. Pullen & Company with respect to this.

The Court: What did you have from the A. M. Pullen Company—just these lists?

The Witness: Those are among the things I had from the A. M. Pullen Company, sir.

By Mr. Humrickhouse:

Q. How long have you worked with the A. M. Pullen Company? A. I have worked with them since August of this year, sir.

1181

Q. Dr. Phillips, I invite your attention to certain numbers that appear at the left-hand margin of the chart under a caption which says "Discounts off list." Will you explain

*Almarin Phillips, for Defendant—Direct.*

that? A. Yes, sir. The discounts off list refer to the prices which the mirror manufacturers received on these orders, starting at 78. The 78 is the 78 discount off the mirror list. Cash—zero. The dash indicating in this case no cash discount. Then we have 78-1, for example, and they go on down to discounts off list 79 plus another 10 plus another 10 with a two percent cash discount.

Q. Did you find it was customary for all of these people to allow two percent cash discounts? A. It was customary, but there were many deviations from it, sir.

Q. How about the bottom figure which says 79 plus 10 plus 10 and 2. What does that mean? A. The 79-10, 10 and 2, means that whoever purchased these mirrors was charged a price that was based on 79 percent off the list, plus another 10 percent off, plus another 10 percent off, and then a two percent cash discount.

The Court: Doctor, did you examine the invoices and orders to see if that was true or did you just accept that information from the Pullen Company?

The Witness: By and large, sir, I have accepted

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Pullen & Company's information. In some instances I have done some checking, but not very much.

By Mr. Humrickhouse:

Q. That is reflected in the schedules? A. Yes, it is in the schedules.

Q. What does that bottom figure, 79 plus 10 plus 10-2, really mean, if anything, off list? A. Almost 83½ off list. 83.33, I believe it is, exactly.

Q. Dr. Phillips, tell the Court and jury what range of prices you found during the month of November 1954? A. They appear, sir, as going from a high of 78 percent off the list with no cash discount, down to the 79-10, 10 and 2

*Almarin Phillips, for Defendant—Direct.*

that we just referred to. This price is about 24 percent below this price (indicating).

Q. What does the chart show with respect to one individual company? Let us take the first one, Carolina. A. The chart shows the orders which Carolina took from furniture manufacturers for each day at whatever price it was made. For example, we find that on the first day of November they took orders from furniture manufacturers at two discounts. One sale was made at 81 and 2 off the list. Another sale made at 80 and 2 off the list.

We see without reading each individual one the red scatter for the Carolina Mirror Corporation, generally at a

1183

level of 80 with a two percent cash discount, but some below and some above.

The Court: You said a minute ago that those price discounts ranged from 78 percent to certain other figures.

The Witness: Yes, sir.

The Court: Where was any sale made at a straight 78 percent?

The Witness: There was one straight sale made by the High Point warehouse of Pittsburgh Plate Glass Company on the 22nd day of November. I would have to look at some of the tables to be certain. I believe it is to the Sanford Furniture Company.

The Court: The 22nd of November. I see it.

The Witness: It is to the Jordan Furniture Company, sir. I am sorry. A very small sale.

The Court: \$111.51.

Mr. Humrickhouse: Dr. Phillips, you may resume the stand at this time, please.

The Court: What is this going to be, Mr. Humrickhouse?

*Almarin Phillips, for Defendant—Direct.*

Mr. Humrickhouse: Your Honor, this is a dollar amount of orders regarding the same chart.

The Court: All of that has been put in evidence by Mr. Pearce.

Mr. Humrickhouse: Yes, your Honor, but we think we

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are entitled to show it to the jury. They have not read all these documents. This is the easiest way to show it to them.

The Court: I think I will rule it out.

Mr. Karp: If your Honor please, counsel may show jury exhibits such as we have. Those exhibits that were shown are plain tables. They can be shown to the jury.

The Court: They gave the jury all that long ago.

Mr. Humrickhouse: Your Honor rules we may not—

The Court: Yes, sir. It is pure repetition and largely immaterial anyhow.

Mr. Humrickhouse: Your Honor, it may be repetition. If it is we beg your Honor's indulgence in that. However, we think that it is necessary for us, in presenting our defense, to show that this economist and statistician has studied these matters and to see what, if any, conclusion he derives from the study, these charts are necessary in showing that.

The Court: Mr. Humrickhouse, you talk about this economist and statistician. Anybody with a piece of pencil and paper who has been to the 7th grade can take this list of yours and add up those figures. You have already put them in evidence by Mr. Pearce.

Mr. Humrickhouse: Yes, your Honor. Had we not put in the schedule by Mr. Pearce there would have been

*Almarin Phillips, for Defendant—Direct.*

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objection to these exhibits and we only put those in as a foundation for the exhibits. That is the reason he was not questioned in that regard. I would like to have another one marked for identification.

The Court: All right, sir.

Mr. Karp: Do you have a copy, Mr. Humrickhouse?

Mr. Humrickhouse: Counsel, you know we don't have a copy for you.

Mr. Karp: You could make a small one and reduce it to size.

Mr. Humrickhouse: I wish we had one to give everybody in the court.

Mr. Humrickhouse: Do I understand that your Honor has ruled that the witness may not even identify the chart?

The Court: I don't know what this one is.

Mr. Humrickhouse: This is the one your Honor was just talking about.

The Court: Yes, I ruled that out.

Mr. Humrickhouse: May we for the record identify it to show your Honor ruled?

The Court: Yes.

Mr. Humrickhouse: This is a chart showing dollar amount of orders at cut price for November 1954, showing separate figures for the Carolina, Galax, Mount Airy, PPG

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High Point, PPG Roanoke, Stroupe, Virginia and Weaver. It is Defendants' Exhibit No. 37. I take it so that we may have our procedure correct, sir, that I now offer it in evidence.



*Almarin Phillips, for Defendant—Direct.*

The Court: It is rejected.

Mr. Humrickhouse: And your Honor would reject it. On the Court's own motion?

The Court: Yes, sir, if you want to put it that way.

Defendants' Exhibit No. 37, last above referred to, was marked for identification and rejected.

By Mr. Humrickhouse:

Q. Dr. Phillips, I show you Defendants' Exhibit No. 38 and ask you to identify it. A. This is a chart, also, from the Pullen tables which indicates the dollar amount of orders which were taken at prices below 78 and 2 percent cash discount by all the companies combined during the month of November 1954.

Mr. Humrickhouse: So I may not transgress your Honor's ruling, I call your Honor's attention to the fact that this is an exhibit which shows in one column all of the figures that were shown on the last exhibit which your Honor rejected, that is, Exhibit No. 37.

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I offer this in evidence.

The Court: Does it show anything that is not in evidence by Mr. Pearce?

Mr. Humrickhouse: It does not show anything that is not in evidence by Mr. Pearce, except the percentage figures, sir. You will see the percentage. The others are just the other figures.

The Court: All right.

Mr. Humrickhouse: I will offer this in evidence.

The Court: I will reject that, too.

Mr. Humrickhouse: For the same reasons, I take it, your Honor.

*Almarin Phillips, for Defendant—Direct.*

The Court: Yes, sir, because it is pure repetition of the testimony of Mr. Pearce.

Defendants' Exhibit No. 38, last above referred to, was marked for identification and rejected.

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By Mr. Humrickhouse:

Q. Now, Dr. Phillips, coming back to Defendants' Exhibit No. 36, how many different discounts are shown during November? A. 18, I believe, sir.

Q. What conclusions do you draw from the chart, Defendants' Exhibit No. 36?

Mr. Carlson: If the Court please, I would object to that on the grounds that this is the province of the jury that is being drawn from this witness.

The Court: I do not know what he is getting at, what conclusions. It sounds like the question is objectionable. What do you mean, Mr. Humrickhouse? What conclusions does he draw from it?

Mr. Humrickhouse: As an economist I want him to state whether he considers the prices uniform or not.

The Court: Oh, no, the jury knows whether the prices are uniform or not. The economists do not know any more whether the prices are uniform than anybody else in here when they have the same figures.

Mr. Humrickhouse: If you will let them see.

The Court: They are looking at it right now.

Mr. Humrickhouse: That does not show the dollar figures.

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The Court: Objection sustained.

Mr. Humrickhouse: Will your Honor give me just a moment, please?

*Almarin Phillips, for Defendant—Cross.*

The Court: Yes, sir.

Mr. Humrickhouse: You may cross examine, gentlemen.

*Cross examination by Mr. Karp:*

(For the Government:)

Q. Dr. Phillips, you referred to the Jordan account, a PPG account. Jordan Furniture Company? A. Yes, sir.

Q. You call attention to a 78 per cent discount there. Was that the price quoted them, 78 per cent off the 1950 list? A. Yes, sir.

Q. There was no cash discount? A. None.

Q. A quotation of 78 per cent off the list price does not involve a cash discount as an inducement to pay cash, does it? A. Would you repeat the question, please, sir?

Q. A quotation to the trade of a 78 per cent discount off list price does not involve any cash discount which is paid in consideration of prompt payment, does it?

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A. The statement does not, no, sir.

Q. Some of those figures after the dash, those 2's, and so forth, that was not the discount off the list, was it? The only thing off the list was the 78 per cent, is that correct?

A. The 78 and many others. It is true that the figures after the dash do not refer to the discount. Excuse me, to the lists.

Q. You jumbled them all together. You took the cash discounts, the amount paid for prompt payment, and jumbled them together with the discount off the list? A. In my opinion these cash discounts are not being—

Q. I am asking you what you did, Doctor. I am not asking you for your opinion. I am asking what you did. A. Will you repeat the question, sir.

*Almarin Phillips, for Defendant—Cross.*

Mr. Karp: Read the question.

(The reporter read the question indicated.)

The Witness: No, we did not. We showed them separately very carefully.

By Mr. Karp:

Q. Looking at Galax, Defendants' Exhibit 34, you see that long line of 78's. What was that 78 in so far as the announcement to the trade on October 29? Did that represent 78 per cent off the list? You see that 78 all the way down that whole page there except for one item or

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two items. A. I see it, yes, sir.

Q. Yes. That figure 78 all the way down the page, does that represent 78 per cent off the 1950 list? A. The 78 does, sir, but it doesn't go all the way down the page.

Q. I am asking you—

Mr. Humrickhouse: Your Honor—

The Court: Let him finish his answer.

Mr. Karp: He is not being responsive.

The Witness: I would be happy to answer the question yes, the 78 per cent does refer to the 78 per cent off the list. What I object to, and why I want to qualify the answer was the part of the question referred to all the way down, and it is intermingled with other discounts.

By Mr. Karp:

Q. I am talking about the 78 figures which are all the way down from the top. The first figure is 78. A. Yes, it is.

Q. And the last is 78. A. Yes, it is.

*Almarin Phillips, for Defendant—Cross.*

Q. Then that 78 is repeated all the way down except for one, two, three items out of that whole long page, is that correct?

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A. Not as I read the page, no, sir.

Q. This column here (showing to witness) under "discount" top to bottom you have 78, do you not, except for one, two, three—except for these few instances? A. If I were to count, I would count the exceptions with respect to 78 as you pose the question—

Q. Eliminating the cash discount.

Mr. Gilmer: Let him answer the question.

By Mr. Karp:

Q. I am asking you, Doctor, eliminating the cash discount, you have the large preponderance of quotations here at 78 per cent, is that correct? A. I agree with you that there are more 78's on this page than any other number.

Q. Those figures 2 after the 78, those are 2 per cent as an inducement to pay cash, is that correct, or as said in other circles, a discount for prompt payment? A. I believe that is undoubtedly where they got established in this industry. I would disagree that is the use to which they are put in this industry.

Q. I am not asking you—

Mr. Anderson: Let the witness answer.

Mr. Karp: All right. I thought he was through. He is making a speech.

The Witness: Mr. Karp, the thing that appears to me

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with respect to these price quotations and the figures after the dashes, cash discounts, is that they vary.



*Almarin Phillips, for Defendant—Cross.*

They range from zero cash discount. We found some as high as 7 per cent cash discount, different companies at different times allow different cash discounts, and I cannot help but think that this is a way of varying prices to furniture manufacturers.

By Mr. Karp:

Q. Is it unusual in any industry to pay or to allow a customer a discount for prompt payment? A. No, sir.

Q. In other words, it is not unusual, is it, Doctor, for any seller to give a customer a price, to quote a price, and then to give him a discount over the price quoted for prompt payment? A. That is not unusual, but neither do I think it represents the facts here.

Q. I am not asking you what you think about the facts here. I am asking you to answer my question.

Mr. Lee: Your Honor, please, I object to Mr. Karp's characterization.

The Court: The witness' answer was not responsive. After responding to the question, he proceeded to inject his own opinions about this list. It is true Mr. Karp is interrupting him a great deal.

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in his answers which he should not do.

Mr. Karp: I am sorry.

The Court: I am going to reprimand him for it.

Mr. Karp: The answer was long and I thought he was through because my question calls for a short answer.

By Mr. Karp:

Q. Now, Dr. Phillips, this cash discount here, 5 per cent, do you notice that? A. Yes, sir.

*Almarin Phillips, for Defendant—Cross.*

Q. That was larger than the cash discount for prompt payment given to Huntley, wasn't it? That was for 2 per cent? A. Yes, the 5 per cent is larger than the 2 per cent.

Q. You know that the Webb Furniture Manufacturing Company is owned by the same owner of Galax Mirror Company, isn't it? A. I don't know that of my personal knowledge. I believe it is true.

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Mr. Karp: I don't have any more questions of the witness.

Mr. Humrickhouse: We have no further examination of this witness.

The Court: All right, sir.

Witness excused.

Mr. Humrickhouse: Your Honor, may I make inquiry with reference to the charts? As I understand, it is appropriate for counsel in summation to use charts from the evidence. Does your Honor say we cannot use those charts? That if we want to use some we have to make different charts?

The Court: I say you cannot use a chart that is not in evidence.

Mr. Humrickhouse: All right, sir.

Mr. Gilmer: Your Honor, as to the dollar volume chart, in order to save time, would it be permissible for counsel to use that chart instead of having to read so many figures to the jury?

The Court: You don't have to read so many figures. All your figures are on this one little sheet of paper.

Mr. Gilmer: I take it that we cannot make a chart based on the exhibits that have been introduced.

The Court: No, I am not telling you what you cannot do in argument at this time. I say those charts are not

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in evidence.

Mr. Gilmer: I understand. Is it understood with the identification by Dr. Phillips they are authenticated but not allowed in evidence by you at this time?

The Court: No, I wouldn't say that. I wouldn't say they are authenticated because it has not been subjected to any questioning. I don't know whether they are authentic or not.

Mr. Gilmer: Would we be allowed to authenticate the charts by Dr. Phillips?

The Court: Those charts, no. Those charts are out, definitely out.

Mr. Gilmer: Carolina Mirror Corporation and Mr. Gardner rest their case.

Mr. Morison: John A. Messer, Sr., Galax Mirror and Mount Airy rest.

Mr. Humrickhouse: Pittsburgh Plate Glass Company rests its case.

Mr. Holton: Stroupe rests.

Mr. Gibson: Virginia Mirror rests its case.

Mr. Lee: Weaver Mirror Company rests its case.

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AND THEREUPON the following Proceedings were had in the absence of the jury:

Mr. Humrickhouse: On behalf of Pittsburgh Plate Glass Company, if your Honor please, we would like to renew our motion for a judgment of acquittal. In addition to the matters assigned in argument at the close of the Government's case, we would like to argue the paucity of evidence in this case so far as Pittsburgh Plate Glass Com-

*Colloquy.*

pany is concerned in the present posture of the case after your Honor has entered a judgment of acquittal as to the individual defendant employee of

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Pittsburgh Plate Glass Company, Mr. W. A. Gordon.

If your Honor pleases, your Honor knows certainly that a corporation can only act through flesh and blood, through some person, and for this jury to determine that this corporation was guilty of entering into any agreement, there must be evidence that some person on behalf of the company went into the agreement or entered into the agreement.

There is no evidence in the case to indicate that Pittsburgh Plate Glass Company or any person employee of the company ever knew of any agreement to stabilize prices if such an agreement was entered into at Asheville or at the Bluffs.

Your Honor, we have gone over very carefully during last night the entire transcript in the case. I have references to a number of cases wherein the Pittsburgh Plate Glass Company was mentioned. But I don't think that it is necessary to call those to your Honor's attention for I feel that as your Honor indicated, the telephone calls by Mr. Jonas to Pittsburgh Plate Glass Company, if such calls were made, were immaterial.

The Court: You forget the Pittsburgh Plate Glass Company involved is the branch at High Point that sent out that letter. I don't know whether it is High Point, or wherever it is. The one that Mr. Barrett presides over.

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Mr. Humrickhouse: No, sir, your Honor. The High Point place is the one that sent out the letter and that is the one that Mr. Hancock is the manager of.

The Court: All right, then, Mr. Hancock.

*Colloquy.*

Mr. Humrickhouse: There is no evidence that Mr. Hancock ever heard about any meeting at the Bluffs or at Asheville or about any discussion.

I say that to point up, your Honor, this reason: The mere sending of simultaneous price announcements is not sufficient to convict.

The Court: It is if the jury believes they were sent out as a result of some agreement, and they themselves are the evidence of the concerted action.

Mr. Humrickhouse: But your Honor, there must be knowledge on the part of the person sending the letter of any agreement before that specific fact can be considered by the jury.

The Court: I don't agree with that proposition.

Mr. Humrickhouse: If anybody throughout the United States on October 29 or October 30 or November 1st sent out a letter changing the price to a 78 percent discount and there was no further proof, then under your Honor's ruling they could be found guilty under this indictment because there is no evidence—

The Court: If the jury believed that was the result

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of concerted action. Certainly you are well enough grounded in law to know that juries are the judge of the weight of the evidence.

Mr. Humrickhouse: But your Honor ought not to permit them to speculate on it and that is what you would be permitting them to do. I know they are the judge of the weight of the evidence, but if there is no evidence of knowledge of the existence of the conspiracy at the time the letter went out from the Pittsburgh Plate Glass Company warehouse at High Point, then your Honor should not permit them to speculate that the sending of the letter was as the result of an agreement.



*Colloquy.*

1207

The Court: Mr. Humrickhouse, if I were to entertain your argument, the fact that all these letters from seven different corporations were sent out practically simultaneously, the only exception being your client or one other who sent them out on the succeeding business day, if there were no other evidence, the jury could not consider that any agreement had been reached. They would have to accept what Mr. Anderson called the unfortunate coincidence as a coincidence. Do you believe that any reasonable jury would accept it as a coincidence? Juries deal with realities.

Mr. Humrickhouse: Yes, your Honor, they deal with realities from the evidence, and there is no reality to present to them in the person through whom this corporation may have acted. There is no evidence.

The Court: Didn't somebody sign the letter?

Mr. Humrickhouse: No, sir. There is no signature on the letter. The evidence is that Mr. Barrett assumes that Mr. Hancock sent them out.

Mr. Karp: Pardon me. There was an admission by counsel that the letter was signed by Mr. Hancock.

Mr. Humrickhouse: No, sir. There is no such admission. At that stage of the evidence Mr. Karp said, "Well, if you won't agree about them, I will have to

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subpena Mr. Hancock." And your Honor said, "It is immaterial anyway." I have a reference to it in the transcript. The letters were signed Pittsburgh Plate Glass Company. There are no initials on them.

The Court: I do not care whether there are initials or not. I notice throughout this case, gentlemen, you all were very careful not to put on the stand witnesses that knew anything.

### Colloquy.

Mr. Humrickhouse: So was the Government, your Honor. They had a perfect opportunity to subpoena Mr. Hancock if they wanted to do so. It is not up to us to disprove something that has not been proven. Your Honor is putting the burden on the defendants to disprove an allegation in the indictment.

The Court: You sent out a letter emanating from Pittsburgh Plate Glass Company signed by it or signed in its name, and the Pittsburgh Plate Glass Company is a defendant here, not Mr. Hancock.

Mr. Humrickhouse: Yes, sir. We don't have to explain why we sent it out if the Government doesn't prove that we knew something about an agreement, because the law is clear under *Pevely Dairy Co. v. U. S.*, 178 Federal 2d, 363, and the *Cole v. Hughes Tool Company*, 215 Federal 2d, 927, that the mere sending of price announcements or the mere simultaneous

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changing of prices to a uniform price is not in itself sufficient to sustain a finding of a violation of the Sherman Act. Your Honor knows that if the sending of the letter is as consistent with innocence as it is with guilt, then your Honor, if that is the only thing in the case against us, your Honor should not submit that to the jury because your Honor knows it is just as consistent with innocence as it is with guilt.

The Court: All of that argument is that you assume that the Pittsburgh Plate Glass Company had no knowledge whatever of this meeting up at Asheville. Your company was represented up there. They discussed prices. They discussed price raises. They talked with Mr. Jonas over the phone. Mr. Gordon said they were all talking about price raises and all thought the prices ought to be raised. All of that is in evidence.

300

*Colloquy.*

I dismissed Mr. Gordon from the case because there was no evidence at all that he inspired or urged any of this increase.

Mr. Humrickhouse: Or entered into it.

The Court: Or entered into it as an individual, yes. But there is no question but that your company knew of all this discussion. The jury would certainly

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have a right to infer that your letter was sent out on the same basis as the others were, as a result of this discussion and agreement and understanding up there. You cannot separate that letter from what happened at Asheville.

Mr. Humrickhouse: No, sir; you can't separate the letter from what happened at Asheville, but you can't show in the record that any man who knew what went on at Asheville sent out the letter on November the first. The Government is put to that proof, to show knowledge on the part of the person doing the act.

The Court: Again that is where you are at fault. You seem to think that there is some individual charged now. Mr. Gordon was under the charge, and I dismissed him from it. But that does not dismiss the corporation.

Mr. Humrickhouse: But the evidence clearly shows that Mr. Hancock was the person who was responsible for prices at the High Point warehouse. There is no evidence to show that Mr. Hancock knew anything about the meeting at Asheville or at The Bluffs.

We respectfully submit, your Honor, that this company should not have to undergo further proceedings in this matter because the Government has failed in

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its proof to give any evidence that any living person knew what went on at Asheville and for the corporation, as a result thereof, the letter went out. The only evidence that

### *Colloquy*

is before the Court, as far as Pittsburgh Plate Glass Company is concerned, is that the letter went out. There is no evidence to show that the person sending it knew anything about any alleged agreement or conspiracy.

We think that your Honor should not submit that matter so far as we are concerned to the jury for the same reasons that you didn't submit Mr. Gordon's case to the jury. We should have argued this matter more strongly at the time of the conclusion of the Government's case. We realize that now, having looked over the transcript. However, there is nothing in the evidence for the defense or brought out by cross-examination by the Government of any witnesses for the defense that changes the evidence so far as a violation by Pittsburgh Plate Glass Company is concerned.

We respectfully urge, sir, that you sustain our motion for judgment of acquittal at this time for the Pittsburgh Plate Glass Company.

The Court: The motion is denied.

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Mr. Gilmer: If your Honor please, on behalf of Carolina Mirror Company and Mr. Gardner, I want to renew the motion at the conclusion of the evidence by the Government with special inclusion of Mr. Gardner for a judgment of acquittal.

The Court: Are you serious about that? For what reason? I would like to hear it.

Mr. Gilmer: Your Honor, frankly I said with special reference to Mr. Gardner for this reason: I can't see any reason for just singling out Mr. Gardner unless we were going to indict every official of every company involved, or two or three officials of every company involved. I think it is highly technical.

The Court: You want your client dismissed because the Government did not indict somebody else?

*Colloquy.*

Mr. Gilmer: Not necessarily. I think your Honor would wonder, at least, in view of the evidence you have heard, why he was just singled out.

The Court: I do not know why he was singled out, but that certainly would not be any reason for dismissing the case against him.

Mr. Gilmer: If your Honor felt it was just technical, I have seen your Honor dismiss——

The Court: You say technical. Wait a minute.

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Is not Mr. Buchan a son-in-law of Mr. Gardner?

Mr. Gilmer: No relation.

The Court: He is connected with the company.

Mr. Gilmer: That is right.

The Court: Who are the sons-in-law of somebody?

Mr. Gilmer: Not my client.

Mr. Karp: All the others.

Mr. Gilmer: Mr. Beeler of Virginia Mirror is a son-in-law of Mr. Schottland, according to testimony.

The Court: This Mr. Buchan says that he went up at Mr. Gardner's request to attend the meeting on the Drive, and he said he came back and reported what had happened to Mr. Gardner and Mr. Gardner says, "We will have to go along and get out a letter, too." You say this is no evidence to justify submitting to the jury the question of his participation in this conspiracy.

Mr. Gilmer: I don't say there is no evidence, your Honor, no, sir.

The Court: That would be the only reason I would be justified in dismissing him.

Mr. Gilmer: I feel this way about that, that the evidence as to Mr. Gardner, and I don't think anybody has contradicted that, as a matter of fact, the Government witnesses proved it, that when he went



*Motion for Acquittal.*

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up there to listen to find out what the situation was. He specifically instructed Buchan to listen to see what was going on, and to report to him what the price situation was.

The Court: That is right.

Mr. Gilmer: Trying to find out prices is not in itself a violation of law.

The Court: No.

Mr. Gilmer: Trying to find out what his competitors are doing is not.

The Court: But you are omitting any reference to that part of the evidence to which I just referred. When Mr. Buchan came back and told Mr. Gardner what had happened up there, the attitude of Mr. Messer, and that they must all get out a letter on the same date, and Mr. Gardner says, "We will have to go along" or "better go along and get out our letter, too."

Mr. Gilmer: I think the evidence along that line as I recall it is that he came back and told him that John Messer said he was going to get out a letter. Mr. Gardner said, "If he is going to raise prices, we better raise prices, too."

The Court: Isn't that raising them with a common understanding?

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Mr. Gilmer: I don't think so, your Honor, not necessarily so.

The Court: I would think so. There is no justification for dismissing the indictment.

Mr. Morison: Your Honor, I would like to renew the motion for John Messer, Galax Mirror and Mount Airy Mirror for a verdict of acquittal.

The Court: You can't be serious in that, Mr. Morison.

Mr. Morison: Your Honor, I do not wish to argue it at this point.

The Court: I did not think you would.

*Colloquy.*

Mr. Morison: I would move for the record. In view of your Honor's views on this, I will reserve my argument for later.

Mr. Lee: On behalf of Weaver Mirror Company, I wish to renew my motion for judgment of acquittal. I want to assign the reasons which I assigned upon the original motion, and the additional reason as this: Your Honor said there was a letter of October 29 unexplained.

The Court: That is right.

Mr. Lee: We submit that we have sufficiently explained it at this point in all the evidence where we are entitled to a judgment of acquittal.

1216

The Court: You have explained it to your satisfaction, but I do not know whether it has been explained to the jury's satisfaction. The jury, after all, is the judge of those things.

Mr. Lee: May I take about two minutes?

The Court: All right, sir.

Mr. Lee: The evidence as pertaining to Weaver Mirror Company is this: They proved by Helms the letter of October 29. Helms was not at Asheville, he was not at the Bluffs. The next evidence that came in was from Jonas that it was rumored that Weaver was willing to go along with the price raise. We have put on Mr. Weaver, and I think your Honor's questions to him were very pertinent, that the answers were of such a nature that at this point we are entitled to a judgment of acquittal. We have explained the presumption, and not denied by any Government testimony nor by the facts or by circumstantial evidence. You might say this to boil it down: The only evidence here to connect Weaver Mirror with this is that Weaver wrote the letter of October 29. That, we think, is thoroughly explained to such an extent that we are entitled to a verdict of acquittal.

*Motion Denied.*

The Court: I say that is for the jury to determine, whether or not you have sufficiently explained it.

1217

That motion is denied.

Mr. Holton: Your Honor, we renew the same motion on behalf of the Stroupe Mirror Company.

Mr. Gibson: To preserve Virginia Mirror's position, we renew our motion on the grounds argued in chambers.

The Court: You renew that motion in the face of testimony of the two Mr. Stroupes themselves?

Mr. Holton: If your Honor please, we felt it was in the interest of our client to renew the motion. We do not care to argue it, sir.

The Court: All right, sir, that motion is denied.

1218.

Mr. Gibson: My colleague suggests that the Court did not hear the statement on behalf of Virginia Mirror, that we renew our motion for the grounds stated in chambers the other day on November 25th.

We understand your Honor's position on that and do not care to argue it further, sir.

The Court: All right, sir. The motion is denied.

Do you gentlemen have anything else you wish to bring up?

Mr. Gilmer: Yes, sir, your Honor, we have some requested matters for your charge.

Does the Government have any requests to submit to you?

Mr. Karp: Yes, we do.

The Court: This is the time to thrash them out, gentlemen. Let us have them. Exchange them.

Do you gentlemen have anything to say about the request for charges? I have read over the request for both sides and generally speaking they are accurate statements of law.

390  
*Colloquy.*

Some of them are not accurate and some of them contain phrases that better be omitted. A number of them are repetition. They state the same thing in different words. Generally speaking they state the law accurately.

Mr. Gilmer: Your Honor, I think that Instruction

1219

No. 7 offered by the Government, that first sentence, according to my understanding, is not a correct statement of the law.

The Court: No. 7?

Mr. Gilmer: Yes, sir.

The Court: How do you figure that, Mr. Gilmer?

Mr. Gilmer: My recollection of the indictment in this case is that they must prove that we intended to engage in a conspiracy in restraint of trade, if we are guilty at all.

The Court: Is this statute subject to the general principle of the law that ignorance of the law does not excuse one from the commission of a criminal act?

Mr. Gilmer: I assume that is correct, your Honor. I took this sentence to mean that the Government did not have to prove that we entered into an agreement of any kind to restrain interstate commerce. I think it would mislead the jury as drawn.

The Court: Suppose the jury did not know anything about this law? Suppose the defendants did not know anything about this law, that they did not intend to violate any law and were not thinking of restraining interstate commerce, but nevertheless they entered into an agreement to fix uniform prices? Would they not have violated the law?

1220

Mr. Gilmer: I hope not. Doesn't the Government have to prove that any agreement or conspiracy, if any, that we entered into must have been for the purpose to restrain interstate commerce?

*Colloquy.*

The Court: I do not think so. There are countless cases, certainly a number of them, where people engaged in industry, just as here, were losing money and having a hard time, and they agreed to raise their prices or stabilize the prices or stabilize the industry, and they did not intend to restrain commerce in any technical sense, but they intended to stabilize the prices within the industry by all agreeing to charge the same price.

I think the cases say that their motives or purposes are immaterial. They are violating the law by their agreement.

Mr. Gilmer: I thought that might tend to mislead the jury as written, in view of what the indictment charges.

Under Instruction No. 9, offered by the Government, we feel that is an improper instruction and is not correct.

The Court: Some of these instructions may be sound statements of law which still ought not to be given because they might be confusing to the jury in this

## 1221

particular case or because they are inapplicable in this particular case.

Mr. Gilmer: I agree. I have only had time to look over these hurriedly because they are so lengthy and there are so many of them.

In No. 9, the statement is:

"The jury is not concerned with, and need not consider, discounts for prompt payment or any other allowances or charges to customers."

I do not think that is a correct statement of the law. We submit under your Honor's rulings that they can consider the differential in prices within the testimony in this case to take into consideration as a circumstance whether or not an agreement was entered into.

The Court: Yes, sir. Let me read this No. 9 again.

Mr. Gilmer: Yes, sir.



*Colloquy.*

1222

The Court: I think that last sentence there would probably add some confusion to the jury in view of what I am going to tell them about the right to consider the prices that were charged with reference to the particular question of whether or not a conspiracy had been entered into.

As I have told counsel, I am going to tell them that.

Mr. Gilmer: That is my point.

The Court: I am also going to tell them, and I think I have made this clear to counsel before, that if they do believe that a conspiracy, agreement, or understanding was entered into, it does not make any difference whether the parties lived up to it or not.

Mr. Gilmer: We understand that, your Honor, yes, sir.

Now, then, Number 11, the statement is made that: "Since all conspiracies to fix or stabilize prices are prohibited by the Sherman Act and made unlawful, it is immaterial whether any particular price-fixing scheme resulted in higher or lower prices or whether the scheme is wise or unwise, healthy or destructive."

I am interested mainly in the third sentence of that paragraph.

The Court: All right, sir.

1223

Mr. Gilmer: (Reading) "Whether there was a glass shortage or whether there was a price war or even whether there existed competitive evils in the mirror manufacturing industry are not defenses to price fixing."

I submit that the instruction ought not to be given that way because under your Honor's ruling these matters may be taken into consideration in the defense of this case as to whether or not we entered into an agreement. If each of these defendants acted independently according to what they believe was their best business judgment because of

*Colloquy.*

the glass shortage or anything else that they honestly thought, they are matters that can be considered by the jury.

The Court: You have tendered instructions to that effect?

Mr. Gilmer: Yes, sir. Won't this make it confusing because a jury does not understand the difference between evidence they can consider and the defense of a case. This sentence says, "Whether there was a glass shortage or whether there was a price war or even if there existed competitive evils in the mirror manufacturing industry are not defenses to price fixing."

I agree as a statement that is sound. It is not a

1224

defense. But it is an element of our defense that the jury may consider. I think it would be confusing to leave it in that language.

The Court: They are not defenses. I do not know that I will give any of these instructions in that exact language.

Mr. Gilmer: I am objecting more to the language than anything else.

Mr. Karp: Do you want to finish all the objections?

Mr. Gilmer: I think it would be a little better.

The Court: Yes, sir.

Mr. Gilmer: I am just talking about all my objections.

The Court: Number 12, I think is in substance a repetition of Number 11.

Mr. Gilmer: I think so.

The Court: That last phrase "potential threats to the American economic system" does not belong in there.

Mr. Gilmer: I don't think so. I had to read these so hurriedly that I may have skipped a lot of things that somebody else might have noticed.

The Court: Number 13 is also repetition.

Mr. Gilmer: I had not tried to cover the repetitious part, your Honor. Your Honor will take care of

*Colloquy.*

1225

that.

The Court: It repeats in brief form what was said at greater length in 11.

Mr. Gilmer: And several other places. There is a lot of repetition in these others from that standpoint. I am not concerned as much with repetition as I am with specific objections at the moment.

The Court: Fourteen is the next one probably. I do not know whether you are concerned with it or not. But that differs from what we have been discussing.

Mr. Gilmer: That is right. I felt what is a conspiracy, your Honor would charge on. It wouldn't make much difference who gives you the thing to charge. Fourteen and 15 cover the same thing.

The Court: They are the same thing.

Mr. Gilmer: Sixteen does more or less the same thing.

On 17, your Honor, in the middle of that suggested instruction, the Government is asking for an instruction to the effect that an association meeting from October 24 to 28 at which prices to be charged were discussed. I submit, your Honor, that is not the evidence. I submit that the evidence is that prices were discussed.

Further on, I don't think it is fair or that there

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is any evidence to the effect that "representatives of some of the defendants met secretly." They met somewhere, but there is no evidence—

The Court: I crossed out the word "secretly."

Mr. Gilmer: All right, your Honor.

The Court: I just made a notation and marked "questionable" because I doubt the wisdom of the Court's making a resume of the evidence or commenting on it. When the Court embarks on that, he has to cover the whole field of evidence, and I am not certain I have it clear in my mind enough to do it.

*Colloquy.*

In addition to that, I always felt it was the business of counsel in arguing the case to present their interpretations of the evidence to a jury fully, without the Court undertaking to do it.

Mr. Gilmer: We are happy your Honor shares that view.

The Court: I marked that rather questionable as to whether I would give anything on that or not.

Mr. Gilmer: Thank you, sir.

Frankly, I have not paid any attention much to 18 and 19. I don't see any necessity for it if you charge on conspiracy. Generally they seem to be repetition. They are just statements taken out of law books or encyclopedias or something.

**1227**

But 21 is the next one that I had marked questionable, it seems to me. That is a short one.

**1228**

I take it that your Honor would not give an instruction to that effect which would indicate in any way that we could not comment on the fact that Mr. Jonas and his companies were not indicted in this case in order to go to the credibility of his testimony. I think that is for the jury to determine.

The Court: I am not going to give you an instruction, I do not think, on Mr. Jonas being an accomplice.

Mr. Gilmer: Under his testimony, is he both an accomplice as well as a co-conspirator?

The Court: He was a co-conspirator, yes.

Mr. Gilmer: Isn't that the same as an accomplice?

The Court: I do not know. It may be. I do not think I will give an instruction in the way it is phrased there.

Mr. Gilmer: Your Honor has given many instructions along the line of No. 22, and I am sure your Honor will give it in your own language as you usually do, but the second sentence before the end says, "It is only neces-

## Colloquy.

sary that they should have the certainty with which they transact their own most important concerns in life." I think the sentence should be rearranged at least, and the language rearranged on that, and that is not my recollection

1229

of the language your Honor usually uses.

The Court: I do not think so.

Mr. Gilmer: That is all I have to suggest for the moment.

Mr. Lee: If your Honor please, before these lawyers that get into antitrust law get into arguments and objections, I would like to make this objection. All through certain of these instructions there is left out that you have to have knowledge of a conspiracy before you can enter into that conspiracy. That is United States against Falcone. In that case, as your Honor will remember, a merchant was charged with selling raw materials.

The Court: No, I do not remember the *Falcone* case. This expression "as your Honor will remember", "as your Honor well knows", your Honor does not know every case in the books, I can assure you of that.

Mr. Lee: *U. S. v. Falcone* was this: A merchant was selling molasses, sugar, meal and other supplies to John Jones, and John Jones was a member of a conspiracy to manufacture whiskey. They tried to charge him along as a member of that conspiracy. That case went to the Supreme Court of the United States, and in that case the Court held that the Government had not proven any knowledge on the part of Falcone of any

1230

conspiracy.

It applies particularly to my client in this case. In other words, he has had to have had knowledge of a conspiracy before he can get into it. Just the mere writing of the letter of October 29 would not be sufficient. He would have



*Colloquy.*

to have had knowledge of a conspiracy before he can join it. It is incumbent upon the government to prove that.

The Court: I think these instructions cover that fact. They are not covered in just the language you are using.

Mr. Lee: I think we are entitled to it.

The Court: Instruction No. 14 says, "The offense is sufficiently proved if the jury is satisfied that two or more people acted together in the accomplishment of an unlawful purpose, and that in this unlawful purpose they acted with mutual or common understanding as to the purpose to be accomplished and cooperated together in the accomplishment of this purpose." That certainly states that they must have had knowledge they were acting together for the accomplishment of an unlawful purpose.

Mr. Lee: I think where several of these instructions speak of it, it must be knowingly done, not just a mere coincidence.

1231

The Court: Of course that is true.

Mr. Lee: I ask the Court to be specific in instructing the jury that it must be knowingly done.

The Court: Have you tendered an instruction to that effect?

Mr. Lee: Yes, sir, we have one, based on the *Falcone* case, which is our No. 2, that we ask for: "Before any defendant can be guilty of conspiracy, such defendant must have knowledge that a conspiracy existed, and, having such knowledge, joined therein."

1232

The Court: I have no occasion to quarrel with that. It is a statement of law that is otherwise covered.

Mr. Lee: I am not conscious of it being covered in any other instruction in clear and unequivocal language.

The Court: You mean it is not covered in language that you want it covered?

*Colloquy.*

Mr. Lee: No, sir. I think we are entitled, especially my client, and the others, for it to be clearly and unequivocally stated.

The Court: That language you have quoted there would be misleading in the instant case because it would lead the jury to believe that there must have been an agreement or conspiracy entered into and then information thereof given to your client. I suppose that is whom you are interested in. With that knowledge, he thereafter joined in it.

Mr. Lee: I think I am entitled to that.

The Court: I don't think so in that language.

Mr. Lee: Might I inquire of the Court as to what language I would be entitled to?

The Court: No person can be convicted of conspiracy unless he acted with other persons in the accomplishment of an unlawful objective with knowledge that he was acting in concert for a common purpose.

## 1233

Mr. Lee: That satisfies me. I yield to your Honor's language.

On No. 7, the last sentence in that has been given time and time again, but it is erroneous to this extent. The law presumes that persons intend the necessary and direct consequences of their actions knowingly done—

Mr. Karp: Which?

Mr. Lee: No. 7. "Knowingly done" should be added to that.

The Court: What is that, Mr. Lee?

Mr. Lee: The law presumes the persons intend the necessary and direct consequences of their actions, knowingly done. In other words, I could do something by coincidence. We argued that before the Court of Appeals in the Fredericksburg Bank case and there was a case on that subject which holds where knowledge is a necessary element of an offense that should be amended to that extent—knowingly done.

*Colloquy.*

The Court: I do not think it is necessary to put that in there if I instruct the jury in regard to your client that he must have known of this agreement or understanding.

Mr. Lee: I think it is misleading. That arose, if I were to shoot Mr. Karp, intentionally, then I am presumed to know the consequence of the act. If I killed him,

1234

I couldn't say I just intended to shoot right close to the heart and not kill him. I think that is primarily where that arose.

The Court: Any other objection?

Mr. Lee: No, 10, your Honor. No. 10 as proffered:

"The antitrust laws apply to every member of a price-fixing group, whether he be large or small and whether or not he be in a position to control the market, if he is found to have participated in the conspiracy or in the agreement to fix prices."

He has left it wide open for merely intrastate matters in which the Weaver Mirror Company has dealt with in so far as this evidence is concerned. I think he is putting there an instruction to the jury that you can be guilty of doing an act which is impossible to do, as far as my client is concerned.

The Court: Instruction 10A is the one which I take it is directed particularly to the actual Lee client.

Mr. Lee: In the first sentence, "... then anyone participating"—I think "knowingly" should go in front of the "participating"—"in such combination, conspiracy ..."

The Court: He could not participate in a conspiracy because I have told you that I was going to instruct the jury that unless he knew about the agreement and understanding

1235

he would not be in it.

*Colloquy.*

Mr. Lee: All right. This might be out of place right here, but your Honor has ruled that when the conspiracy has been formed, that is all that is necessary. All the evidence shows the formation of a conspiracy in the Western or Middle District of North Carolina and not in the Western District of Virginia.

The Court: You are talking about the jurisdiction on the question of overt acts?

Mr. Lee: Yes.

The Court: The writing of the letter was an overt act, if it is necessary.

Mr. Lee: Overt acts are not necessary.

The Court: I thought you were raising the question that they were.

Mr. Lee: Yes, sir. Overt acts are not necessary. Of course, under 18371, the conspiracy statute under which we usually try—

The Court: Maybe I spoke too quickly. What is the question you are raising?

Mr. Lee: Inasmuch as the Government evidence shows that all of the acts of the formation of the conspiracy and completion of the conspiracy, that the Court does not have jurisdiction.

The Court: I do not think we need to argue that.

## 1236

That has been so plainly decided. The Trenton Potteries case decides that.

Mr. Gilmer: Your Honor, there is one instruction I overlooked in the shuffle here, and that is No. 2 offered by the Government. I don't think your Honor would give an instruction which is a speech by the Supreme Court of the United States on the charter of freedom.

## 1237

The Court: Yes, I have that marked to be removed.

Mr. Gilmer: Thank you.

*Colloquy.*

Mr. Karp: Refused as to the entire or the first sentence? The purpose of the Act is a very important instruction.

The Court: I do not know whether it is or not. The language of the Act is important, but I don't know that the purpose of the act is.

Mr. Gilmer: It is in the indictment.

Mr. Anderson: Your Honor, the language applying there was with regard to boycott cases, and I don't think it is applicable to a conspiracy case. I would like to raise one question with respect to instruction No. 4. The last sentence states that the offense under the antitrust laws consists in the joining together or acting under a common understanding to accomplish such a purpose, or to use such means—I am a little confused here. I don't know what the "such" refers back to under this particular instruction. It does not characterize the purpose as being lawful or unlawful or the means as being lawful or unlawful. I am not sure if it is meant to read as it is or if there has been a typographical error.

The Court: I take it this is what is meant. The first sentence: "The defendants are charged with

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having conspired to restrain trade by fixing prices. The act of conspiring is the gist of the offense under the anti-trust laws. The offense under the antitrust laws consists in the joining together or acting together under a common understanding to accomplish such a purpose," . . .

I take it it is the purpose referring to the expression "restrain trade" in the first sentence. What is meant by "to use such means," I do not know.

Mr. Karp: Take it out. It means the same thing. I have no objection to taking out "such means", and a period after "purpose".

Mr. Gilmer: I don't think the Court would object to taking the whole instruction out.

Mr. Karp: That is a basic instruction.



*Colloquy.*

Mr. Gilmer: He will cover that.

The Court: I think it is covered in another instruction anyhow.

Mr. Morison: Your Honor, I have only two small objections. One relates to Government instruction which we have just talked about. In the last sentence it reads, "The offense under the antitrust laws consists in the joining together or acting together under a common understanding to accomplish such purpose" . . . I suggest for the jury a more

1239

comprehensive one if that is to be used, would add the word "under a common understanding or agreement". I think that the word "agreement" is more tended to enlighten the common understanding of the jury than the word merely "understanding".

I also have the same objection, and one more, with reference to instruction No. 5, which is on the next page. In the first paragraph of that instruction, it reads: "Those who engage in an unlawful combination or conspiracy to fix prices violate the law merely by so conspiring, and it makes no difference whether or not the objectives of the combination or conspiracy are achieved or carried out, either in whole or in part."

I suggest that substitution of the words "carried out" rather than "achieved". Of course, the same objection in the second paragraph where the word "understanding" is used, I would like to add to that, "or agreement". That is in the sixth line of the second paragraph, your Honor. I beg your pardon. It is the fifth line.

The Court: All right. Does anybody else have any suggestions?

Mr. Gibson: I think that covers what we have had time to check.

The Court: All right.

*Colloquy.*

1240

Mr. Karp: With respect to our proposed instructions, of course, it was not intended to cover the entire gamut of the Court's instructions. They were suggestions largely with respect to antitrust conspiracy cases. Each one with the exception of a few obvious ones are supported by cases. While the language in each instruction may sound like it deals with the same subject matter, yet the language is different and the Courts have emphasized the differences because they go to the gist of the crime, and are necessary in order to explain to the jury what the crime of conspiracy to fix prices means, et cetera.

Paragraph 7, which is mentioned, your Honor, is supported by the cases cited, and the last sentence which counsel have referred to, that "The law presumes that persons intend the necessary and direct consequences of their actions", is settled law and is an appropriate and necessary charge, we submit

The Court: I was inviting any objections you had to the request made by the defendants.

Mr. Karp: I misunderstood your Honor. I thought you wanted first our viewpoint on questions raised by defendants. When the question came up, Mr. Gilmer said he would rather wait until it was all done. If

1241

your Honor prefers comments by the Government with respect—

The Court: I said I thought on the whole that most of the instructions tendered by both sides were sound propositions of law. Some of them were repetitious, and there was no need for repetition, some of them might have a few adjustments made, but generally speaking, they are fair statements of law on both sides. I want to hear what you have to say now about defendants' instructions.

*Colloquy.*

Mr. Karp: Mr. Carlson has been studying defendants' instructions while I have been listening to statements by counsel for defendants.

Mr. Gilmer: We won't kick what Carlson does. Go ahead.

Mr. Carlson: I am a little confused by this numbering system that appears on the page, but the first one I have before me begins, "You may find that".

The Court: It is numbered in the upper right hand corner.

Mr. Carlson: It is numbered 1, but I have two of them.

The Court: You have 1(a)(a), 1(a).

Mr. Carlson: And another one.

## 1242

Mr. Harmon: Mr. Rogers handed you that one after we had submitted the first group.

The Court: I know the one that Mr. Rogers handed is also No. 1.

Mr. Rogers: Let us make it 1(b).

Mr. Carlson: Which one did you so mark?

Mr. Morison: The one you were referring to, "If you find that."

Mr. Karp: What is that?

Mr. Morison: 1(b)

Mr. Carlson: Referring to 1(b), I think this is something that your Honor will otherwise cover. It is out of context here. It should be covered.

The Court: All right. These instructions you are handing me are just suggestions to the Court, that is all.

Mr. Gilmer: Mr. Carlson, we don't mean for any of them to be in that order. They are just numbered for convenience.

Mr. Carlson: The 1(a)(a) which I am looking at now is not a necessary manner of covering the charges. It is necessary that the jury be instructed as to what the charges mean but not in this fashion.

*Colloquy.*

The Court: I think the objection to that instruction which I have marked to refuse, although I

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will hear counsel from defendants on it, is that it indicates that this agreement must have been a continuing one.

Mr. Carlson: Yes, your Honor, whereas there may be surplusage in the indictment, we do not feel it is needed for your Honor to charge the jury in that fashion and charge surplusage.

Shall I go on, your Honor?

The Court: Yes.

Mr. Carlson: As to 1(a) I think your Honor will have or already has covered that in another context.

The Court: What about 1?

Mr. Carlson: I am not clear on the application of the co-conspirators law here at all. There were no objections raised during the course of the trial grounded on declarations of co-conspirators.

1244

The Court: I do not see the applicability of that instruction, I do not mind saying to you.

Mr. Gilmer: This was prepared by joint agreement with everybody.

The Court: What is the applicability of that to this case?

Mr. Gilmer: We think it is clearly applicable to Mr. Jonas' testimony, if nothing else.

The Court: You say it is not permitted to prove participation of conspiracy by one person by the mere uncorroborated statement of another that the said person was a conspirator.

Why was there any uncorroborated statement of Mr. Jonas?

Mr. Gilmer: He is the only one, your Honor, that made certain statements about an understanding or agreement actually being entered into.

*Colloquy.*

The Court: He went to a meeting.

Mr. Gilmer: With no authority to act.

The Court: I think he was one of those in a meeting in Mr. Hearn's room, was he not?

Mr. Gilmer: No, sir, he was not at the Asheville meeting.

Mr. Karp: Mr. Buchan.

Mr. Gilmer: I beg your pardon. He was and he was

## 1245

in Hearn's room. I was thinking of Mr. Gardner.

The Court: Mr. Buchan also said when he was at the meeting at Doughton Park, the Stroupes were present, Mr. Messer and Mr. Jonas. He described the acrimonious discussion between Mr. Messer and Jonas. Mr. Messer said that they would all have to raise prices, should all get letters out to the trade dated the same day.

He went back and reported that to Mr. Gardner, that Messer was going to raise his prices and what Messer had said about getting out a letter and the 78 percent discount, and after talking it over with Mr. Gardner, Mr. Gardner said, "We better go along and get out a letter, too."

Where is there any uncorroborated statement of Mr. Jonas?

Mr. Gilmer: Mr. Jonas is the only person I recall, your Honor, that testified that there was an agreement entered into at the Bluffs.

The Court: What do you consider that the testimony of Mr. Buchan amounted to?

Mr. Gilmer: The testimony is uncontradicted that he had no authority to bind anybody or say anything up at the Bluffs. He made no agreement of any kind at the Bluffs.

The Court: He did not make any agreement; no.

## 1246

Mr. Gilmer: He didn't say any agreement was made.

The Court: He said what Mr. Messer had said.



*Colloquy.*

Mr. Gilmer: What Mr. Messer had said, that he was going to get out a letter to raise his prices. Mr. Jonas was the only one who said an agreement was made.

Mr. Carlson: Mr. Buchan said he went along.

Mr. Gilmer: In addition to that, the telephone calls that Jonas said he made were uncorroborated. There are a number of instances of uncorroborated statements by this man.

The Court: Mr. Buchan said he talked to Jonas himself.

Mr. Gilmer: I am talking about the ones from Jonas to Gardner, telephone calls.

The Court: Jonas to Gardner?

Mr. Gilmer: Yes.

The Court: I am not referring to those at all. I am talking about the fact that Buchan talked to Mr. Jonas from Mr. Hearn's room.

Mr. Gilmer: Yes, sir.

The Court: And he said that Messer was going to raise prices and he urged Jonas to go along with them. They wanted Jonas in it.

Mr. Gilmer: I don't recall Buchan said that.

The Court: I think he is the man that said, "I told

**1247**

him that Messer was sincere this time and I was in sympathy"—I think he used that term—in sympathy with or thought we ought to go along. I asked Jonas to go along with it because Jonas was a necessary party because of the size of his company.

Mr. Gilmer: That conversation was with somebody else.

The Court: There were two of them up there talking, so I cannot remember.

Mr. Gilmer: Yes, sir. However, that may be the call they claim Mr. Jonas said he made to Gardner, which is uncorroborated. No one says that except Jonas.

The Court: What do you mean, that Mr. Gardner is involved on the uncorroborated statement of Jonas?

*Colloquy.*

Mr. Gilmer: As to that part of the testimony; yes, sir.

The Court: When Mr. Buchan said he went back and told Mr. Gardner what had happened on the drive and Mr. Gardner says to him, "We better go along and get out our letter ourselves," are you blaming that on Mr. Jonas?

Mr. Gilmer: No, I admit, your Honor, that there is other evidence. But there are uncorroborated statements by this man. For instance—

The Court: There are uncorroborated statements by every witness in here as to certain things. There is

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certainly corroboration for involving all these parties in this conspiracy without the testimony of Mr. Jonas. That is what your instruction is directed at.

You say it is not permitted to prove participation in a conspiracy of one person by the mere uncorroborated statement of another.

Mr. Gilmer: That is right.

The Court: That such person was a conspirator. Where is the uncorroborated statement of Mr. Jonas involving anybody?

Mr. Gilmer: What about his call to the Pittsburgh Plate Glass Company? He says he called Pittsburgh Plate Glass Company.

The Court: He did not say they were a conspirator. He did not say Pittsburgh Plate Glass was a conspirator. He said he talked to Mr. —

Mr. Karp? Prichard.

Mr. Gilmer: Mr. Prichard.

The Court: Mr. Prichard, yes. What you are asking me to instruct the jury is, in effect, that some of these people have been involved in this conspiracy purely on the uncorroborated statement of Mr. Jonas. That is the purpose of your instruction.

Mr. Gilmer: No, sir. The purpose is that I want to tell the jury that cannot be done. That is what we

*Colloquy.*

1249

are asking to do, that cannot be done.

The Court: It was not done.

Mr. Gilmer: Then that becomes a jury matter and they should be instructed on that point.

The Court: No, it is not a jury matter because there is no issue on that. I refuse that instruction because it is not applicable here. If Mr. Jonas went on the stand and said certainly these people were conspirators in this matter and there was no corroboration of that at all, he could not draw them in merely on the uncorroborated statement of a co-conspiracy.

There is no question about that. That is not in this case.

Mr. Lee: There is one fact that is certainly uncorroborated, where Mr. Jonas said it is rumored that among others, Weaver wants to raise prices or will go along. That is not corroborated by anybody. The two who participated were Jonas —

The Court: He didn't say you were a conspirator. He said that rumor came to him. That is all he said.

Mr. Lee: That is uncorroborated.

Mr. Carlson: Does your Honor wish me to comment on the last statement made by Mr. Lee?

The Court: No. There is no use commenting further on that instruction. It is not applicable in

1250

this case. I know you gentlemen make a great effort to try Mr. Jonas in this case instead of trying your own clients. I thought that practice went out in the last generation of attorneys.

Mr. Carlson: Shall I go ahead, your Honor?

The Court: Yes.

Mr. Carlson: Turning to Instruction No. 3—No. 2 had already been covered by your Honor, I believe.

The Court: All right, sir.

*Colloquy.*

1251

Mr. Carlson: I think this is a completely misleading instruction.

The Court: That quotation certainly would not be included.

Mr. Carlson: I don't think it supports what is said above to the extent that defendants would indicate. I think the law is that there may be some slight evidence of non-existence of a conspiracy but that would appear in the context of a charge as to evidence of a conspiracy, not dismembering it and setting it out alone here.

The Court: I think I will cover that question sufficiently.

Mr. Carlson: In 4, 6 and 7, and 7(A) as well, defendants have picked out various practices, all of which may go to show the existence of a conspiracy, and they have treated each of them separately. I think the law is that a conspiracy should not be dismembered, and I don't think the jury should view it as dismembered conspiracy by a series of piecemeal instructions on the subject.

Mr. Gilmer: These are suggestions for inclusion in his charge. The charge will not be piecemeal. These are suggestions for the charge.

The Court: Go ahead, sir.

1252

Mr. Carlson: I think that is a very important point, the dismemberment.

The Court: I have your point.

Mr. Carlson: As to 5, I didn't understand what it meant. Maybe the jury will understand it, but I think counsel should understand it, too, before anything can be done with it. Does that mean to say that an attempt to conspire —

The Court: Which one are you talking about?

Mr. Carlson: Numbered request for charge 5.

The Court: I thought you had gone on beyond that. Go on to 8 or 7(A). You can jump to 8, then you can jump beyond that. You can jump to 9.

*Colloquy.*

Mr. Carlson: This again is a piecemeal look at some of the evidence. This is otherwise covered and in proper fashion in the Government's instructions. This point is true through all these previous instructions. These things that they are talking about here, such as whether matters are independently arrived at or whether there were price discussions or whether there was gathering information of prices charged, these are all matters which a jury may consider as evidence of conspiracy.

The Court: All right, sir.

Mr. Carlson: On number 9 specifically, the state-

1253

ments themselves are not accurate as to the law because the matters may be independently arrived at and still be a part of a conspiracy.

The Court: Go ahead, sir.

Mr. Carlson: This, we think, is not the law, your Honor. The law is as stated in Government's instructions. It is also a confusing instruction and is not directed to the real question that we have involved here.

The Court: Which one are you referring to?

Mr. Carlson: 9(A).

The Court: I had noted that to be refused as confusing.

Mr. Carlson: I think 10 has already been covered, your Honor, has it not? The accomplice charge that was raised by defendants?

The Court: Yes, sir.

Mr. Carlson: 10(A) has in part been covered. There is one thing I want to note, and that is that the instruction would seem to indicate that the defendants consider the only direct evidence that the jury would have —

The Court: 10 and 10(A) are both faulty in stating that only the direct testimony of Mr. Jonas—or that the testimony of Mr. Jonas was uncorroborated. They are

1254

both faulty on that ground.



*Colloquy.*

Mr. Carlson: 10(B) is inapplicable as declarations of co-conspirators stated earlier. It is a re-hash of something that was not proper before.

The Court: All of those 10's, 10, 10(A), 10(B), all proceed on the theory that some of these persons are being involved as conspirators on the uncorroborated testimony of co-conspirators. I have no justification for giving any of those three instructions.

Mr. Gilmer: Will your Honor give us an instruction on the credibility question regarding the testimony of the co-conspirator?

1255

The Court: I might do that, although I will not commit myself on that without further investigation.

Mr. Gilmer: We think we are certainly entitled, your Honor, as to either an instruction to him as an accomplice or for you to cover in your charge the way that they must view the testimony of a co-conspirator. We would like for you to seriously consider that for us.

Mr. Carlson: Are you talking about Mr. Buchan as an accomplice or co-conspirator?

The Court: No, they are talking about Mr. Jonas. They are all mad at Mr. Jonas for telling on them.

Mr. Carlson: I think it is clear that it is corroborated and uncontradicted.

The Court: And they want to say that his testimony should be seanned with great care and suspicion because he is an accomplice.

Mr. Gilmer: Your Honor, I submit that is a jury question. Regardless of what differences we may think about the testimony, after all that is what the jury is here to decide. They must decide those facts.

The Court: I say I will consider what kind of instructions to give on that. If I don't give ft, I

1256

will give you a chance to except, of course.

*Colloquy.*

Mr. Gilmer: Thank you.

The Court: I was telling him they were not talking about Mr. Buchan at all. They were talking about Mr. Jonas.

Is there anything else, gentlemen, that you wish to present?

Mr. Gilmer: How much time does the Government want to argue the case?

The Court: How much time do you gentlemen want to argue the case?

Mr. Karp: I should think that altogether, to open and to close, the Government would want around 45 minutes, and not more than an hour. If you want a limit to all parties, we will be glad to accede to any limitation.

The Court: There will have to be some limit. How much time do you gentlemen want?

Mr. Gilmer: We would like to have an hour to each defendant, your Honor.

The Court: I would not think of giving you that much.

Mr. Gilmer: I don't mean where there are combined defendants. For example, one group of counsel we will say.

The Court: How many lawyers would that take. How

1257

many arguments would that take?

Mr. Gilmer: It would be six.

The Court: No, sir, I would not think of setting six hours for argument.

Mr. Gilmer: You asked me what we wanted.

The Court: That is your selling price.

Mr. Gilmer: That is my opening quotation, sir.

The Court: Half an hour is an abundance of time. The issues in this case are very narrow. I am warning you again, you can just talk your heads off and I am going to narrow this case right on down, right or wrong, and if I am wrong, the Court of Appeals will have to correct me, to the meeting at Asheville and the meeting on Skyline Drive, or wherever it was.

*Colloquy.*

1258

Mr. Gilmer: I understand. On the question of length of argument, we must consider the fact that the Government has taken a week in putting on its case.

The Court: A good part of that time was taken up with cross examination of their witnesses.

Mr. Gilmer: I think the record will show very little of it.

The Court: I think it shows a great deal of it. Mr. Barrett was cross examined at great, great length.

Mr. Gilmer: Even considering that, it is a week of testimony that the Government has had.

The Court: Yes, but there is a week about 90 percent of which was immaterial testimony. I could have ruled out a great deal of testimony in this case, if I had known what the Government's case was going to be at the beginning.

But they did not put in their real case until the last two or three witnesses, which made the case. I mean that was the strongest part of their case.

Mr. Gilmer: You mean something for the jury to consider?

The Court: I mean what in the Court's opinion raised the real issue. I will not say whether they made their case because I do not know whether the jury thinks they made their case or not. For a couple of days here

1259

we were putting in exhibits called before the Grand Jury and everything, and finally at the end of the case they came along with Mr. Buchan and Mr. Stroupe and Mr. Jonas, who testified all that happened at Asheville and up on the Drive.

Mr. Gilmer: Yes, sir.

The Court: When the issue was raised directly by that testimony, which I think is the real issue in the case, had I known that before, if that testimony had come in at the start of the case, I could have limited a great deal of the testimony.

*Colloquy.*

I did not because I did not know what they were aiming at with all these exhibits and things. That is one reason a great deal of time was taken up.

Mr. Rogers: If your Honor please, representing Mr. Messer and his two companies, we have been, as you are well aware, under right much of a handicap because we could not get any accurate information about the case from our own client because he could not tell us.

We, therefore, in the argument, will have to rely right largely on circumstantial evidence and what other people have said. We would appreciate it if for that group of three defendants we could have 45 minutes.

The Court: I might permit that when you get to it. I do not like to limit counsel at all as long as they are

1260

discussing material issues in the case. But the evidence here has taken such a wide range and so much of it is immaterial in my mind that I made up my mind when I saw what the real issues were that I was going to cut it down to the heart and let the Court of Appeals say whether it was right or wrong, if there is any occasion to go to the Court of Appeals.

I think all of you can say everything that is pertinent to this case in a half hour, and I imagine there is going to be a lot of repetition in the arguments then. I may be inclined to give you 45 minutes, Mr. Rogers, if you think it is necessary.

1263

AND THEREUPON, the following Proceedings were had in the Judge's Chambers out of the hearing of the jury:

The Court: Gentlemen, I have had an opportunity to go over somewhat further the instructions which were tendered the other day.

*Colloquy.*

First I want to say as to the instructions tendered by the defendant, Instruction 1(a) will be given, which deals with the presumption of innocence and the burden of proof.

Instruction 2 is sound and will be given. It will be embodied along with any more lengthy instruction.

Instruction 3 will be given, and Instruction 1(b) will be given.

Defendants' Instructions 4, 6 and 7 and 7(a) and 8 will be given in substance, although they will be embodied in one single instruction.

Those are the instructions in which you single out the particular acts, such as the discussion of prices in one instance and the gathering of information as to prices in another. It will be my purpose to instruct the jury that those acts are not themselves violations of the law, but they may all be considered in determining whether or not any agreement or understanding was reached.

What is probably more important to you than anything else is that I am not going to give any of those

1264

instructions dealing with the testimony of Mr. Jonas from the standpoint of an accomplice. I have had an opportunity to examine not too lengthily, but some of the leading authorities on that particular branch of the law. Of course, I have known always that that was not a legal rule. It is not a rule of law that a court has to instruct the jury as to the effect of testimony of an alleged accomplice, although the courts say that under certain circumstances it ought to be given. But I find that the circumstances in all the cases dealing with it say that it ought to be given where the testimony of the alleged accomplice is uncorroborated.

In this case, the testimony of Mr. Jonas is not only not uncorroborated, but it is strongly corroborated by the officials, or at least the employees, of the defendant companies themselves. But further than that, there is no denial whatever of Mr. Jonas' testimony, so far as I can recollect.



*Colloquy.*

I may be in error about that, but I do not recollect it  
 Mr. Humrickhouse: Mr. Prichard denied it.

The Court: He denied it on a particularly immaterial matter, and so long as Mr. Gordon—an acquittal has been directed toward Mr. Gordon—it is a completely immaterial matter.

1265

Mr. Humrickhouse: We hope you will tell the jury that.

The Court: I have no idea of telling the jury that. I have no idea of commenting on the testimony of Mr. Jonas. But his testimony is not denied in any important particular.

The only instance I recollect was Mr. Prichard saying he did not call up and send that message to Mr. Gordon, but that is completely out of the case.

1266

Mr. Karp: Moreover, Mr. Prichard said he did not remember.

The Court: Aside from that, the testimony of Mr. Jonas is corroborated, and not in any material matter denied. So I think it would be very unfair to single out this one witness' testimony and suggest to the jury that his testimony is open to suspicion or question, or to be received with caution.

There has been nothing to put the truthfulness of his testimony in question. So I am not going to give any of those instructions dealing with the testimony of Mr. Jonas from the standpoint of being an accomplice.

Mr. Gilmer: Does your Honor mean by that that we cannot argue the question?

The Court: No, as long as you keep in proper bounds, you can comment on the testimony of any witness.

Mr. Gilmer: I understand, but I want to be sure that we understand what you mean by "the bounds" on that question. We can argue that he is a co-conspirator.

The Court: You say you can?

*Colloquy.*

Mr. Gilmer: I say we can, and that they should receive that testimony with caution.

The Court: Counsel can always argue about the testimony of any particular witness, but I do not think the Court ought to give its official stamp of approval

1267

which would be to counsel's comment, or make a statement which goes to the jury as an official statement, you might say a statement of the Court, that the man's testimony is open to suspicion or is to be received cautiously. I do not think that would be fair. I cannot prevent counsel from arguing the question of the testimony of any witness in the case.

Mr. Gilmer: I understood, but I wanted to be sure that as long as you allowed us to argue the question to the jury, we can say that we feel it should be received that way.

The Court: So long as you keep it in the bounds of accuracy.

Mr. Morison: Do I understand that your Honor will not give Defendant's Requested Instruction No. 5, or will that also be included?

The Court: What is your Instruction No. 5?

Mr. Morison: I do not have it before me, sir, but the gist of it is that if there was an attempt to conspire which failed, then no crime has been committed.

The Court: I do not think there is any evidence to support that.

Mr. Karp: An attempt to conspire?

The Court: Yes, that was one of the Instructions. I guess that is in here.

1268

Yes. I made a notation on that, to refuse it because there was no evidence, there was not sufficient evidence or no evidence, to support it.

Mr. Humrickhouse: Your Honor did not give us the ones you had refused. You gave us the ones you were

*Colloquy.*

going to give and the ones you were going to give in substance. I take it you refused all the others that were proffered?

The Court: Well, let me see. I refused 1, 1(a)(a), 5, 9 and 10A and 10B, the last three of which deal with the testimony of an alleged accomplice. Number 8 I refused because I considered that the language of it was confusing and I do not see any particular applicability to it.

It will, however, be covered in substance with another instruction. On the Government's Instructions, I refused Government's Instructions 2, and as to Government's tendered Instructions, I refused No. 2, No. 21, 20, 19 and 8. I refused 8 because I think it is repetitious of another one tendered and because it is covered in another instruction.

As to Government's Instructions 6, 13, 22 and 15, they have been embodied generally, in Instructions in my own language, with some changes of the language in which they were tendered.

1269

I think that covers them all.

Mr. Karp: That includes the reasonable doubt instructions on both sides? I assume they will be embodied?

The Court: In one, of course. I think the reasonable doubt instructions as tendered by the defendants is probably less confusing than the other, than the one tendered by the Government. Neither one of them will be in the exact language in which they were tendered.

I think I covered all of them, gentlemen. There were so many of them, and I had such a brief time to go over them. The minute I got into the office Friday, I was harassed by phone calls from lawyers and everything else. I had a comparatively short time to work on these things, but I think I have touched on all that were tendered.

I thought particularly you would want to know the view that I had about the accomplice instruction.

Mr. Holton: If your Honor please, could we take about five minutes to look over the ones you are going to give?

*Colloquy.*

I don't remember them, of course, and you did not indicate Wednesday.

The Court: Have you got them noted down there?

Mr. Holton: Yes, sir, we have them noted here, but

1270

the instructions are in the briefcase, in my case.

The Court: All right, sir.

Mr. Humrickhouse: If your Honor please, I take it that you will consider that we have objected to your Honor's action in refusing the proffered instructions? Of course, we have no objection to your Honor using your own words if you grant the substance of ours. That will be as to 1, 1(a)(a), 5, 8, 10, 10A and 10B, for the reasons stated at Bar.

The Court: All right, sir. Protect yourself by objecting to everything. That is the soundest, safest way to do.

1271

AND THEREUPON, the Court and Counsel returned to the courtroom and the following proceedings were had:

The Court: Gentlemen, you will recall a few minutes ago in our discussion I said that some of these instructions would be given in substantially the same language as tendered.

Others I had rewritten combining some of the tendered instructions and putting others into my own language. Physical equipment and facilities were not sufficient to make copies for all of counsel, but there are four copies that you can distribute around among yourselves and get some idea about what I am going to say.

THEREUPON, the Court handed to counsel for the Government and the Defense the following written instructions:

1272

The defendants are charged with having violated those provisions of the antitrust laws embodied in Section 1 of the Sherman Act. This action is directed against restraints

*Colloquy.*

of trade in interstate and foreign commerce and, in so far as pertinent here, provides that:

Every . . . combination . . . or conspiracy, in restraint of trade or commerce among the several states . . . is hereby declared to be illegal . . . Every person who shall . . . engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor . . .

## 1273

3. The indictment charges that the defendants, in violation of the antitrust laws, have combined and conspired to restrain interstate trade and commerce by an agreement, understanding, and concert of action. It is charged that the combination and conspiracy consisted of an agreement to stabilize and fix prices for the sale by the defendant corporations of plain plate glass mirrors to furniture manufacturers by agreeing upon and using identical list prices covering over 2000 sizes of plain plate glass mirrors as a base for the quotation of prices for such mirrors and by agreeing upon uniform discounts to be applied to such identical list prices.

The gist of the offense under the law is in the act of conspiring, that is, in agreeing or joining together or acting together under a common understanding to fix or stabilize prices.

## 1274

4. Those who engage in an unlawful combination or conspiracy to fix prices violate the law merely by entering into such an agreement or understanding and it makes no difference whether or not the objectives of the conspiracy or agreement or understanding are carried out either in whole or in part. In order to establish the crime charged here it is only necessary that the conspiracy or agreement be established.

The government is not required to prove that the defendants or any of them intended to violate the law or



*Colloquy.*

intended to restrain interstate commerce. If the jury finds that the defendants, or any two or more of them, agreed or combined to fix or stabilize prices of commodities moved in interstate commerce, their intent in entering into such an agreement or combination is immaterial.

Since all conspiracies to fix or stabilize prices are prohibited by the Sherman Act, it is immaterial whether any particular price-fixing scheme resulted in higher or lower prices or whether the scheme is wise or unwise.

Whether there was a glass shortage or whether there was a price war or whether there existed competitive evils in the mirror manufacturing industry are not defenses to price fixing.

1275

The fact that the motives of the members of the combination might have been to improve conditions in the mirror manufacturing industry is not a defense and it is not material that the activities of the defendants, if they entered into any such agreement as has been charged, may have been regarded by them as necessary to enable them to conduct their business properly. The law condemns any agreement by two or more competitors acting together to determine or fix prices.

1276

5. If you find and believe that there existed a combination, conspiracy, agreement or understanding to fix prices for plain plate glass mirrors to be sold in interstate commerce to furniture manufacturers, then anyone participating in such combination, conspiracy, understanding or agreement must be found guilty of violating the Sherman Act, whether or not such defendant itself engages in interstate commerce.

For the law makes it unlawful for any individual or corporation to engage in such a conspiracy. If interstate commerce is affected it does not matter that a member of the conspiracy is not engaged in interstate trade and com-

*Colloquy.*

merce or that activities of such a member may be intra-state in character.

The antitrust laws apply to every member of a price-fixing group if he is found to have participated in a conspiracy or an agreement to fix prices no matter whether his business be large or small or whether or not he is in position to control the market.

## 1277

6. A conspiracy is an agreement or understanding between two or more persons to do an unlawful act and it exists wherever there is a combination, agreement or understanding between two or more persons for committing such unlawful act. The crime is the conspiracy or understanding itself. It is not necessary to the existence of a conspiracy that the persons involved should themselves have called it a conspiracy, and it is not necessary that they should get together and enter into any formal or definite agreement as to the things which they intend to do, or that they should all agree formally upon the details or plans by which the unlawful combination should be made effective. The offense is sufficiently proved if the jury is satisfied that two or more people acted together in the accomplishment of an unlawful purpose, and that in this unlawful purpose they acted with mutual or common understanding as to the purpose to be accomplished and cooperated together in the accomplishment of this purpose.

It will be plain to you that a conspiracy may be and in fact often must be shown by circumstances rather than by definite proof of an actual agreement. Persons violating the law do not customarily make their plans known to the outside world, and it is usually necessary in considering whether or not a conspiracy exists, to

## 1278

consider all of the facts and circumstances proven in the case. The existence of a conspiracy may be proven directly or by facts and circumstances from which it may be logically

*Colloquy.*

inferred that there was in fact a common understanding. Its existence may be proven directly or it may be proved by a combination of the circumstances and the direct evidence.

The fact that a particular defendant played a lesser or even a minor part in the conspiracy in no way lessens his guilt. In contemplation of law he is as guilty as any dominant member of the conspiracy. If any defendant, having knowledge of the existence of the conspiracy, knowingly participates with the conspirators for the purpose of assisting in the common design, then he becomes a party thereto and is as equally guilty as the originator of the conspiracy.

## 1279

A. The mere discussion of prices among defendants or any of them is not in itself a violation of law and neither is the gathering of information concerning prices charged or proposed to be charged by a competitor a violation of law.

The mere fact that the defendants had the same announced prices for their mirrors is not in itself a violation of law nor would the mere fact that the defendants sent out letters at or about the same time announcing identical price quotations constitute in itself a violation of law.

None of these acts taken separately is a violation of law, but they are all matters which you should consider in determining whether or not the actions taken by the defendants in this case were the result of agreement or understanding among them. And if you find that they were, then the defendants would be guilty of a violation of law.

## 1

Mr. Karp: If the Court please: Gentlemen of the jury, I want first to express my appreciation and the appreciation of my associates, and the District Attorney, the Government, to you, the jury, for the close and conscientious attention which you have given to this case.

*Colloquy.*

The job of the prosecution was not always an easy one. Our witnesses, as you undoubtedly observed, were officials or ranking employees of the defendant corporations. From the mouths of those adverse, oft-time recalcitrant witnesses, the admissions that they conspired and agreed to fix prices in violation of the law were pried loose.

You have followed the evidence, gentlemen. You have followed it with close attention, and with intelligence. Your forbearance, your patience, your conscientious interest in performing your laborious but important public duties as citizens and members of the jury, they all demand, and we give you, our sincere, our most sincere, thanks and our appreciation.

The evidence, gentlemen of the jury, which we have submitted to you constitutes the strongest kind of proof of an unlawful conspiracy, a conspiracy precisely as outlined in my opening statement at the beginning of the trial.

## 2

In that opening statement, it was said that we would show you clearly and in simple terms that defendants conspired to fix prices. I submit this we have shown. We have shown it by documents and by sworn testimony made before you under oath.

Gentlemen of the jury, in the opening statement the Government said it would prove that there was an agreement among these defendants. That, we have conclusively proved to the hilt. It was also predicted in my opening statement that defendants would attempt to inject confusion into the trial. That they did try, as you observed, with a series of mumbo-jumbo statistical tables and charts, but all of the Government's evidence in this case show in specific terms the existence of the conspiracy charged in the Grand Jury's indictment.

Therefore, you did not find it strange, I am sure, that these very tables and charts which defendants used for the purpose of confusion are, in fact, shown upon close exam-

*Colloquy.*

ination, and after a little bit, just a little mite, of cross examination, to point inexorably, to point relentlessly, to point with finality, to agreement—those very charts, those very tables point to the agreement.

Read the figures on those statistical charts and tables. They cry out “78 percent,” “78 percent,” “78

## 3

percent.” It is all through the tables, right after November 1st, and attempts to disguise this fact under a cloak of cash discounts, discounts for prompt payment, which is done in all businesses, and which is in addition to and regardless of the quoted price, the established price or the prevailing price, all those cash discounts, those discounts for prompt payment, which have nothing to do with the quoted price, we submit were singularly unsuccessful in confusing the Court or in confusing the jury.

They did not confuse, because examination of them, and the cross examination, showed that they could not confuse, in fact, because it showed a 78 percent discount. The agreement was 78 percent off the 1950 list, just as those letters on the week end of October 29th said, and defendants’ own statistics show that to be the case.

In my opening statement, gentlemen, at the beginning of this trial, I outlined to you the charges in the indictment returned by the Grand Jury. I promised that the Government would prove beyond any reasonable doubt that these defendants had conspired to fix the prices for plain plate glass mirrors sold in interstate commerce to furniture manufacturers located in states in the Southeast, as well as in various other states throughout

## 4

the United States.

We said that we would prove this conspiracy by showing that these defendants met, that they discussed, and agreed to quote an identical discount of 78 percent off



*Colloquy.*

identical list prices covering more than 2000 sizes of mirrors. These charges we have proved conclusively, not only beyond a reasonable doubt, which is all that is necessary to prove defendants guilty as I expect the Court to charge, but beyond all shadow of a doubt.

'Defendants' whole scheme is clear from the evidence. All of the pieces of evidence, all of the parts of that plan or scheme, all the little segments of the conspiracy, have fallen into proper place, and the evidence of what happened at Asheville, the Bluffs, and the letters written on the week end of October 29th to November 1, 1954, all hang together and fit into one compact scheme, fit into one composite picture, to make it complete.

The October 24 to October 28 meetings at Asheville, and at the rooms there, the meeting at the closed bedroom in the Parkway at the Bluffs, and the late October afternoon of October 28, 1954, the telephone calls, and finally the letters written on the same week end, were all conclusively shown and admitted by witnesses to be part and parcel of one conspiracy, to fix, to raise,

## 5

to stabilize prices for plain plate glass mirrors to be sold to the furniture manufacturers.

Let's start with the focal point, the central theme, the letters written by each of these corporations, these defendants, on the same week end, announcing a new price to the trade, an identical price of 78 percent off the 1950 list. Let's look at these letters. See how they read, the similar announcements, the same list prices, the same discount?

Let's take one of them. Let's take Virginia Mirror. October 29, 1954, to the trade.

"Owing to high prices and higher prices in most all materials entering into the manufacture of mirrors and higher labor costs, we are withdrawing all quotations effective today. Our new discount is 78 percent off the 1950 mirror list. Terms 2 percent, net 30."

*Colloquy.*

Terms 2 percent, net 30, were just terms for prompt payment, obviously. The discount is 78 percent off the 1950 mirror list. That is the price. Take any one of the others. Take Weaver, October 29, 1954.

"To Our Customers:"—watch the point in the letter.

"We find we have been operating at a loss and this condition cannot continue if we expect to stay in business." Of course, they always operate at a loss when they want to raise prices, but that is no excuse even if it happened.

## 6

The law says you cannot fix prices up or down. You cannot agree to fix prices. You cannot take prices out of the competitive market. That is the American way of life.

The competitive market, that is the democratic way of life, the competitive market, and you cannot take it out by agreement, and you cannot deprive the consumers of that right, because when you start breaking that, you start breaking our freedoms, you start breaking our economic freedom and all our freedoms.

## 7

That is the American system. Corporations cannot combine to deprive us of it, not to deprive you, or me or anybody else. So he says, "We must advance our prices and effective immediately, we quote 78 per cent discount from the 1950 mirror list."

And so they go on, the same way, the same thing, the same letters, substantially the same thing, the same discount, written at the same time.

Then, let's look at the April, 1950 list price book, 2,143 sizes, every price the same for every size; 2,143 identical list prices for 2,143 identical sizes of mirrors. The same identical prices, the same identical discounts, the same letters, sent at the same time.

The Government's evidence is completely uncontroverted. It is completely uncontradicted, gentlemen of the jury. It

*Colloquy.*

is completely clear that the 78 per cent discount off the 1950 list came into being by a conspiracy, by agreement among these defendants here on trial. They got together, they discussed, they went along on a 78 per cent discount.

This was drawn out of the mouths of the officials of the defendants themselves, out of their own employees who were there. They met in secret, they reached their understanding, they wrote letters, all according to plan.

## 8

What about these meetings? One of the jurors asked a question directed to Messer, Jr.; it was a good question. It was an intelligent question. He directed it to Messer, Jr., of Galax and Mount Airy, and he brought out from him that prices were lower before October 29, 1954. It was shown he wanted to raise prices at that time.

That was an opportune time. The furniture business is good, there might be a tight glass market. It is a good time to raise the prices. But you have to get together because competition might bring the price down somewhat. You cannot stabilize it that way, you cannot fix it unless you get together. And that is what the law says you cannot do. But they would not raise their prices—Messer, Jr., said it—until they could see what the other manufacturers would do.

So, they went to Asheville. They were all at Asheville. Carolina was there, and Virginia Mirror was there, Weaver was there, Stroupe was there, Pittsburgh Plate Glass Company was there. They were all represented there. And, of course, Messer's own Galax Mirror and Mount Airy Corporations were there, too.

Defendants Messer on their own admission went to Asheville to raise prices. They had to see what the others would do. This was extracted from him on cross examination and by a direct question of this honorable

*Colloquy.*

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Court. So they went to Asheville, they saw what the others would do, so they could all raise prices together.

We know who was at Asheville. We have the record here, right from the Mirror Manufacturers Association. It is all in black and white. Messer, Sr., and Messer, Jr., and Cheek of Galax and Mount Airy, Buchan from Carolina, Robert Stroupe from Stroupe Mirror, Hearn from Virginia Mirror, Weaver representing Weaver Mirror and then Pittsburgh Plate Glass Company, Ketchum, Gordon, Levell, Burroughs, were all there and discussions took place.

The record is full of testimony concerning the discussions at Asheville to raise the prices. You need not labor that. That was clear, clear and convincing, clear and I might say sometimes picturesque.

The record shows that all defendants were involved in these discussions to raise prices. Pittsburgh Plate Glass Company representatives are on record that they discussed the prices, that they discussed price raises.

Yes, the testimony concerning the PPG representatives is that those representatives stated that the defendants ought to raise the prices and it is clear that defendants had reached their agreement on prices at Asheville. Indeed, the consistent, the corroborated testimony is that

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the substance of the telephone call was to tell Jonas of the Lenoir Mirror Company that everyone was in agreement on raising prices and that it was up to Jonas, the boys at Asheville, were going along on 78, and now it all hinged on Jonas.

Lenoir Mirror Company was not a member of the association, you recall. That company was not represented there in October 1954, down at Asheville. Jonas, as president, was not there as indicated by the testimony of Miss Westcott, the secretary of the Mirror Manufacturers Association, and as stated by Jonas.

*Colloquy.*

He was not a member, so he had no business of being there at Asheville. Jonas had to be contacted and he had to be gotten to go along, or else the agreement could not stick, perhaps. It might not endure.

Lenoir was a strong factor. Its competition also had to be stifled, lest the conspiracy prove abortive, lest the conspiracy already hatched up there at Asheville come to naught and die at birth.

They went to work on Jonas. You remember the testimony by Buchan of Carolina Mirror. You remember the testimony by Robert Stroupe and Grady Stroupe and Jonas himself. They wanted Jonas to go along. The conspiracy was formed at Asheville, but they wanted Jonas to go along, so that his competition would not upset the

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apple cart.

Now, you recall the content of the telephone calls. You remember that 1, 2, 3, telephone call business. Hearn to Lenoir—he calls Jonas, Buchan and Stroupe get on the telephone, they urge him to go along. Jonas wants to be sure they are not pulling his leg, that they are actually going to raise their prices. He wants Gordon of PPG to talk to him.

Gordon calls back immediately. Then, Hearn calls back. One telephone ticket after another, telephone ticket 07144, telephone ticket 07145, telephone ticket 07146, one after the other, corroborated by Jonas, by Buchan, by Bob Stroupe, by documents in writing, made at the time.

What time did they call? What time did they call him? Around ten or 10:30, just as Jonas said, when everything was hatched at Asheville, then they called Jonas to get him to go along. And so Jonas, still not sure, they arrange a meeting at the Bluffs, and that is arranged by Jonas, according to his promise, calling Hearn from his home the next morning before he went to the office.

Here is the telephone bill. He called Asheville and a meeting was arranged and they met at the Bluffs. They get to the Bluffs and Jonas again was told that at



*Colloquy.*

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Asheville they had agreed, and it was up to Jonas. There had to be a letter sent out that day. Mr. Messer insisted on the letter. This was arranged at Asheville, also, and it is made clear by the testimony of Robert Stroupe and Grady Stroupe.

Jonas, at the Bluffs, agreed to go along. Others had to be notified that Jonas was going to go along. This information closed any competition. The Asheville conspiracy, the agreement, could now go ahead according to plan. PPG had to be notified. Some of the others had to be notified. Jonas had the job of notifying PPG. Why?

Because of Messer's insistence on the letter. That is all. To make sure everybody goes out as agreed, everybody sends that letter out as agreed. So Jonas, the next morning, in order to make sure that he is not going to be sitting out there cutting prices without the others, he calls Gardner that night, October 28th, so we have another telephone bill. Jonas calls him from his home to make sure Carolina Mirror Corporation, one of his major competitors in Carolina was going to go along.

Jonas was assured Gardner was going along. A letter was being written by Gardner, dated October 29, 1954.

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Then Friday, the morning after the Bluffs meeting, Jonas calls Pittsburgh Plate Glass. Sam Prichard received the call. He was given the message to Gordon that Jonas was going along. The price was 78 percent off. Letters had to go out on the same day, as Messer had insisted.

Obviously, to make sure that Messer's insistence on the letters going out at the same time was being followed, Jonas called again, PPG, on November 1, 1954, on the Monday, the first business day following Friday, Jonas was assured that matter was being taken care of.

Was it? Was the matter taken care of? The letters of October 29 to November 1 show that the matter was being

*Colloquy.*

taken care of. The documents show the matter was being taken care of. Five letters went out the same day, October 29th.

Defendant Virginia Mirror Company, October 29, 1954, a letter to the trade announcing a 78 percent discount. The same kind of letter by Galax Mirror Company, October 29, 1954; Mount Airy Mirror Company, October 29, 1954; Carolina Mirror Company, October 29, 1954; Weaver Mirror Company, October 29, 1954. Then Stroupe's letter comes into play. Stroupe told a story, as shown here to two Grand Juries. He notified his customers by telephone or by personal visitation.

## 14

We couldn't find a letter. But the FBI made a probe and, on November 14, 1954, they found two letters to the furniture manufacturers dated October 30, 1954, and finally Pittsburgh Plate Glass Company also took care of the matter as Jonas was promised. Their letter went out on November 1, 1954.

This clear-cut, this cohesive picture, a complete picture of conspiracy, was in large part pried out in the course of testimony of ranking officers of defendant corporations, called to the stand by the Government, despite their knowledge, adverse position and hostility.

Jonas' testimony and the testimony of Buchan, Robert E. Stroupe and Grady V. Stroupe fit together like a glove. In contrast, what did defendants do? Defendants have been extremely careful not to call to the stand as their witnesses persons who knew anything about these meetings.

As to the testimony of those who knew about the meetings, Buchan, the Stroupes and Jonas, the Government called them. The defendant corporations' battery of counsel left them well enough alone. Grady Stroupe testified, Bob Stroupe testified, Buchan testified, and Jonas testified, but they left them well enough alone. They held Jonas, over from the mid-afternoon session from Friday to Monday; they wanted to look at the documents

## Colloquy.

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they subpoenaed from the Lenoir Mirror Company. But the little examination they pursued after they spent time looking them over and holding the man over from Friday to Monday, the little examination that they then pursued, left Jonas unshaken, and, indeed, stronger in every point of his testimony concerning every aspect of the conspiracy.

Now, one of the corporations' attorneys, Mr. Rogers, for a moment dared to probe. He did ask a question of Mr. Jonas, and the answer came back strong, positive, clear. His answer was, "I was informed, as I testified Friday, that these telephone calls from Asheville which I received, Mr. Messer was wanting to raise his prices, and everybody else there was in agreement."

The evidence, gentlemen of the jury, is clear, direct, convincing, beyond a reasonable doubt. I said beyond a shadow of a doubt, that defendants, each and every one of them, are guilty of conspiring to fix prices as charged, in violation of the law of the land.

Defendants, the lawyers of these corporations, have tried to confuse you, but you, intelligent men that you are, were not, have not been, and will not be confused. They may try to confuse you in their statements now to be made, but gentlemen, the record speaks for itself, loud and clear.

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In my closing statement, I promise you any attempt at confusion will be set at rest, for the record is clear, the record is clear that the defendants have agreed, they have conspired unlawfully to fix prices in October 1954. This the record before you shows. They have violated the law.

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Mr. Rogers: I read you one quotation from Mr. Jonas' testimony on my cross-examination.

Here, I think in response, apparently, to a question asked by the court, he said, "I might add further that after

### *Colloquy.*

the statement was made, Mr. Messer turned so red I thought he was going to have a stroke. That was the whole gist of it, trying to blame me of something I was not guilty of."

He was trying to explain how the argument started.

The Court: Yes, sir. Both of us were right.

Mr. Rogers: Yes, sir. And I don't doubt but what he was on the verge of a stroke.

Thank you.

The Court: Yesterday you asked that because of the multiplicity of your clients, Mr. Rogers, that you have a little more time. Do I understand you are the only counsel who will argue?

Mr. Rogers: Yes, sir.

Mr. Humrickhouse: Shall I proceed, your Honor?

The Court: Yes.

Mr. Humrickhouse: May it please the Court, and gentlemen of the Jury: At the proper time, after the conclusion of the argument of all counsel, the Court will instruct you and charge you as to the law in the case. The Court tells you what the law is,

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but you are the tryers of the facts. The Court does not tell you what the facts are. You are the sole judges of the facts in the case, and no one can decide the facts but you.

Gentlemen, counsel for other defendants in this case have covered in their closing arguments, and other counsel who follow me undoubtedly will cover, the question of whether there was a conspiracy or not, whether there was any conspiracy or agreement at all. I am not going to undertake to repeat what these gentlemen have said or to forecast what those who follow may say. But I would like for you to look at the chart that Mr. Gilmer handed you just for a moment, if you please.

I would like for you to look at the chart and see that there are 18 separate price quotations on this chart, ranging at the top at 78, to the bottom one of 79 plus 10 plus 10-2, and all interspersed between those two are 79's, plus

### *Colloquy.*

additional allowances, 79 plus additional allowances, plus cash discount; 80, 81 and 82.

I asked you to look at that because I just wanted to suggest to you that this shows, as I have said, 18 different prices, and sales by everyone of these defendants at less than 78 percent, all relating to

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new orders, and all within 30 days after the alleged agreement or conspiracy took place.

I cannot refrain from saying to you, gentlemen, that to me this is powerful evidence that no conspiracy existed.

Now, listen: You will have with you the government indictment, the indictment returned by the grand jury in this case, to which very little allusion has been made. You will have that with you when you retire to consider your verdict.

You will find that the charge in there by the government is that a conspiracy arose and "by agreeing upon and applying in pricing, a uniform discount".

Gentlemen, the chart which you hold in your hands shows exactly the reverse of what the government charges. It does not show uniformity. It shows competition.

Gentlemen, when I came into this court room, my associates and I, we had two clients. One, W. A. Gordon, and the other, the Pittsburgh Plate Glass Company. You saw Mr. Gordon leave the court room discharged of any guilt. So all you have to decide concerning my part in this case is whether or not, on the facts, my remaining client, Pittsburgh Plate Glass Company, can walk out of this court room

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discharged of any guilt.

On this question, nothing that happened at Asheville matters. You and His Honor have heard the testimony about Mr. Gordon at Asheville, and you have heard the Court say that what happened there did not make Mr. Gordon one of the co-conspirators.



### *Colloquy.*

Listen to the Court, on page 921: "Gentlemen of the Jury, the government has announced it has finished its case in chief, and I am of the opinion that there is not enough evidence that has been produced to hold Mr. Gordon, W. A. Gordon, individually as a member of this alleged conspiracy or agreement.

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There seems no doubt that Mr. Gordon, who is connected with Pittsburgh Plate Glass Company, was at Asheville, and visited among his friends and acquaintances and men in the industry who gathered there, and he probably or apparently, if the evidence is correct, had knowledge that these men were discussing the matter of prices. But there is nothing to indicate as a matter of accuracy that he conspired in any agreement or attempted to urge these people to make any agreement, or entered into any agreement, or understanding, himself, in connection with prices.

I do not think the evidence would be sufficient to hold him individually as a member of any conspiracy if such is proven.

Now, his Honor, so far as we are concerned, has laid down the law of the case. You cannot make Pittsburgh Plate Glass Company a conspirator through the acts of Mr. Gordon, because Mr. Gordon has been discharged of any implication in any conspiracy or agreement.

Now, gentlemen, it is trite, of course, for me to say, but necessary, that a corporation cannot act by itself. It must act through persons. That is obvious. And what person has Mr. Karp pointed to who has acted for Pittsburgh Plate Glass Company in this matter? Nary a one.

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The Court: Mr. Humrickhouse, the Government is not required to point out the person who directed the corporation's actions. Just that the corporation acted. I do not want the jury to misunderstand that.

### *Colloquy.*

Mr. Humrickhouse: If your Honor please, there must be evidence as to through whom the corporation acted.

The Court: I cannot agree with you on that.

Mr. Humrickhouse: We understood that your Honor would charge to that effect. That is what the indictment says, that they acted through agents or employees. If there is no evidence to show through which employees or agents they acted, the matter cannot be charged to the door of a corporate defendant in this case.

The Court: I do not agree with that statement at all.

Mr. Humrickhouse: The jury will determine the facts as to that, your Honor.

The Court: The jury will not determine the law, Mr. Humrickhouse.

Mr. Humrickhouse: Of course they will not. But I was arguing to them that there is not a scintilla of evidence here to show how the corporation acted, if it acted. I think under the law, and under your Honor's charge, I can do that.

The Court: There is a letter that Pittsburgh Plate

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Glass sent out.

Mr. Humrickhouse: And that letter is just as consistent with innocence as with guilt.

The Court: It may be. That is a matter for the jury to determine.

Mr. Humrickhouse: Of course it is. But your Honor is calling it to their attention.

Now, I say that from Asheville that there is not a scintilla of evidence to show that Pittsburgh Plate Glass Company entered into any agreement or conspiracy there. So we go to the Bluffs, and you will find that Pittsburgh—and I say Pittsburgh to shorten it—the company, was not there.

Therefore, if it is a conspirator in the case, it didn't happen at Asheville, and it didn't happen at the Bluffs. Then where and when did Pittsburgh become a conspirator

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*Colloquy.*

in this case? When did it enter into any agreement, if there was one?

Even if you find that Pittsburgh Plate Glass Company announced a price change to 78 on November 1st, and there is no question that a letter bearing that date was sent or delivered by the High Point warehouse, I am sure you will ask yourselves: Does that matter? What difference does that make? And you will correctly say to yourselves that this announcement does not make Pittsburgh Plate

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Glass Company a conspirator in this case.

Then you will look for some person employed by the company at High Point, North Carolina, who made the price change, not for the company's business reasons, but intending to make the company a part of the conspiracy. And you will not find that person.

I would like to direct your attention at this time to a statement made by Mr. Karp, Government counsel, in his opening statement this morning.

Pittsburgh Plate Glass Company representatives, he said, are on record that they discussed the prices, that they discussed price raises. That is not so, and you know it.

Yet, he continues, the testimony of PPG representatives is that those representatives stated that the defendants ought to raise the prices, and it is clear that the defendants had reached their agreement on prices at Asheville, and that is not so, for you know that no PPG representative testified, except Mr. Barrett and Mr. Prichard, and neither of them were at Asheville.

Gentlemen, a person cannot be—and I am sure His Honor will charge you at the proper time—a person cannot be a part of something, a conspiracy or otherwise, unless he knows about it. Knowledge must be driven home to him. You can't guess about it. He must know it right up here.

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*Colloquy.*

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There is not a line of evidence in the case that any Pittsburgh Plate person at High Point knew about Asheville or about the Bluffs, or about any of the charges which the Government has made in this case. It was the Government's duty, and it is the Government's duty, to present evidence which would leave you without a reasonable doubt as to the guilt of Pittsburgh Plate Glass Company.

The burden was on the Government to prove our guilt by witnesses. It is not our burden to prove our innocence. Don't you remember weeks ago when we started that I told you this thing about the presumption of innocence that goes with every corporation and every individual, with any person who is charged with crime?

It goes with him as his safeguard when you retire to your jury room. It goes with this corporation. It goes with every defendant, the presumption of innocence has availed. That cannot be drawn back unless the Government has shown beyond a reasonable doubt that it should be drawn back.

Then you may inquire. Don't forget that. Pittsburgh Plate Glass Company and none of the other defendants in this case have to disprove the Government's case. The Government must prove its own case beyond a reasonable doubt from the lips of witnesses from this chair.

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I know that his Honor will instruct you that at the proper time, for it is the law. If you find beyond any reasonable doubt that price announcements made Pittsburgh a part of the conspiracy, then you must find and believe—and I don't think you will—that that announcement two or three days after other mirror manufacturers had announced price changes, was made solely because Pittsburgh intended to be come a part of the conspiracy or to become a conspirator.

### *Colloquy.*

You will have to disregard every other reason that might have caused Mr. Hancock, the warehouse manager at High Point, who had sole charge of fixing prices at the High Point warehouse of Pittsburgh Plate Glass Company, you would have to disregard all the other reasons, poor business, glass shortage, boom in the furniture business, and so forth.

You would have to find that none of these reasons influenced Mr. Hancock, but rather, you would have to find that in some way, and it will have to be a mysterious way, gentlemen, because there is no fact in this case to explain it, in some way he learned about a conspiracy and he announced a price change just so he could get in the conspiracy.

I don't believe you gentlemen will let your imaginations run that far. You can't guess. You cannot assume.

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You cannot conjecture. You must base your conclusions from the evidence.

And if you were going to let your imaginations run beyond the testimony, then you could easily say to yourselves that within two days Mr. Hancock would have learned from sources in the trade, from his customers, that some of his competitors had increased their prices, and that under the circumstances he would have welcomed the opportunity to follow on.

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Now, Gentlemen of the jury, when you study the Court's charge, you will find that it does not make Pittsburgh Plate Glass Company a conspirator to follow a competitor's price increase. It does not make them a conspirator merely because a letter was sent out.

You notice that I have been stressing no knowledge by Pittsburgh Plate Glass Company at High Point. Perhaps you would ask: Could there have been knowledge of the



*Colloquy.*

Bluffs some place else? The only evidence on that point came from the Government's witness, Mr. Jonas.

He said, "I called Sam Prichard and told him about our gathering upon the Bluffs and what we agreed on the price and asked him if he would convey my remarks to Mr. Gordon.

"Yes, did you ask to speak to Mr. Gordon?

Answer: "I think I did. As I recall, I did, but I am not positive.

Question: "What did Mr. Prichard say?

Answer: "He said, 'Well, Buddy, I will tell him what you told me'."

And then you heard Mr. Prichard's testimony, the man who used to be here and who is now in Pittsburgh:

Question: "Mr. Prichard, there has been testimony by Mr. A. G. Jonas that he telephoned you or telephoned Pittsburgh on October 29, 1954, and talked with you and

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that there had been an agreement regarding price and asked that you convey his message to Mr. Gordon. Did Mr. Jonas make any such call to you?

Answer: "He did not.

Question: "There has also been testimony that on November 1, 1954, he again called you and made reference to this previous conversation of October 29th. I ask you if he made such a conversation or if such a conversation took place.

Answer: "It did not."

You have observed the demeanor of the Government's witness, Jonas, a man apparently eager to admit a crime an alleged co-conspirator, an accomplice, if there was a conspiracy in this case. You watched him as he squirmed as he testified. You saw his eyes and his demeanor on the stand, and you saw Mr. Prichard, also.

There is a conflict there that my friend on the other side fails to call to your attention. I do because I think

*Colloquy.*

you are entitled to all of it. But suppose you do believe Jonas, and I don't think you will after hearing Mr. Prichard's testimony regarding the call, still Pittsburgh is not connected to the conspiracy.

Jonas, whose testimony should be viewed with caution, I say, did not testify to any connection between what he told Prichard and Hancock or the High Point price

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announcement. Even if you should believe Jonas—and I say again I think it will be hard for you to do—you will still find a gap, a failure in the Government's discharge of its burden to prove that when Hancock made his price announcement he knew of the Bluffs, or of Asheville.

As I say, gentlemen, as I started, before you can find Pittsburgh Plate Glass Company guilty you must have determined that there was a conspiracy and I say that the Government's evidence totally fails to show that.

But, if you find in the end that a conspiracy was contemplated at the Bluffs, then in order to hold Pittsburgh Plate Glass Company, you must also find that though no representative of that company was at the Bluffs, and although not witness on this stand has shown you a connection between the Bluffs and Hancock's price announcement, and although the Government in its argument has failed to show you or to suggest any connection, nevertheless, in some mysterious way, I repeat, Hancock knew of the Bluffs, believed that a conspiracy was made there and intended to become a part of it.

Gentlemen, I do not believe you will stretch your imaginations that far. I know you will not guess as to your verdict and I know that you will contemplate the evidence as it has fallen from the lips of the witnesses.

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Having done that, then you will reach the inescapable conclusion that the Government has not shown beyond a reasonable doubt that Pittsburgh Plate Glass Company

*Colloquy.*

is guilty, and you will say by your verdict, "Not Guilty."  
I thank you.

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Mr. Karp. (Closing argument.): Gentlemen of the jury: Defendant's counsel have talked about a lot of things. They have talked about social events, they have talked about Mr. Karp. They have talked about Mr. Jonas. They have talked about everything that they possibly could think of at this late hour. But they did not talk about the conspiracy.

We are going to talk about the conspiracy. That is our job. It is a simple conspiracy. It is based upon realities and the jury deals with realities. There are all sorts of talent in this battery of counsel, but we are concerned with realities.

The realities are simple: They met; they went down there to see whether they could raise prices; the competitors talked about it; 78 per cent was right and they drew in Mr. Jonas so that it could stick and it stuck.

## 119

Then, they all wrote letters. They wrote them at the same time. That is no fairy tale. That is a fact. Those are realities. Those are facts.

They brought in the mumbo-jumbo chart. Can you understand it? I have handled a lot of these cases. I can't.

Gentlemen of the jury, why didn't they give you some of the other tables that a 7th grade student can add up? I don't want to spend too much time on this because it isn't worth the dignity of remarks, but I will just refer to it a little bit.

Here is the Pittsburgh Plate Glass Company's tables. They put it in when Mr. Barrett was on the stand. It is Exhibit No. 24. Exhibit No. 24—look at it. They head it

*Colloquy.*

up with the first date, November 2, 1954, customer White, discount 80. But what did they put in immediately before?

I don't know how it got in, but it got in. The order shows it was October 29, 1954. And then they put in Huntley, and Huntley's order was based on telephone, and Mr. Barrett said he did not know anything about the telephone because he does not answer it. He does not know how the order came about. Was it a prior order? Was it damaged, broken, defective glass? They don't know.

## 120

When you cut out White and you cut out Huntley, what have you got; 78, 78, 78. Mind you, you are in November. You are only in November. Let's deal with more of the realities. What happens when there is a price rise from a manufacturer to another manufacturer requiring the commodities? What happens? Is there immediately orders? They are not dealing with groceries for the home.

Even in groceries for the home you might take a couple of days to use up your provisions. They are dealing with manufacturers. They have their furniture patterns made. It takes a little time. So they stick to November, but look at November: 78, 78, 78, and all the others are explained on cross-examination.

We did not have to complicate this case by bringing in the other months. We could have. We did not have to take the time of this court and the jury on immaterial matters. What difference does it make? They agreed, The agreement is unlawful.

This is the purpose of the Sherman Act, to prevent conspiracies to fix price, the agreement to fix price, There lies the evil, the conspiracy to fix price. That is not what the democratic system wants or encourages. That is what the democratic system outlaws, the conspiracy to fix price.

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Let each businessman compete for the price and let there be competition, democratic competition. Let's add some

*Colloquy.*

more addition. Let's get back to grammar school now and do a little adding. Let's look at something we can understand. Let's look at Exhibit 34. What was said about this exhibit?

On cross examination they all admit it, the employee, the statistician, the economist. No attempt was made to exclude orders because of unfilled contracts for breakage, for anything else. You may get a new price out, but you do not violate the contract at the old price.

But ignoring for a moment all of these deficiencies in the charts and the cash discount figures that were thrown in, the charts themselves show what defendants did not want them to show, that agreement was made to charge 78 per cent.

They did not want them to show 78, so they thought they could confuse, apparently, by referring to 78. We know there were discounts before the October 29, 1954 date referred to, 80 and 10, 78 and 10, and so forth and 10, the quotation off the list.

Then they got a new idea. 78-2, not "and" but a dash. That is the prompt payment discount. It has nothing to do with the case. So when you look at this exhibit, this Exhibit 34, you

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will see those 78's dashed. That is 78 per cent off the discount. The amazing thing is that there are so many 78 per cents in early November. Perhaps there are too many small fellows who did not have the previous orders in, or the contracts, or the exclusive dealing contracts, but they are here, 78 per cent.

Look, for example, at Mount Airy. November 2nd, 78 and 10-5. All the rest—and that is November 2nd, mind you. There is an old price, perhaps. How it got there, what is the basis, we don't know. But look at all the others: November 1, November 2, November 12, November 16, November 17, November 20, November 26, 27 and 30: 78 dash, and a number.



*Colloquy.*

Let's deal with the realities. Galax listed 62 orders for November. Eleven of these are at prices lower than 78 per cent. The other 51 orders are at 78 per cent. The Galax chart shows that Huntley was being charged 78 per cent as well as a lower price at the same time, which makes it plain that Huntley must have had an old contract still unfilled.

But regardless of that, 51 orders out of 62 at 78 per cent. It seems that it was beginning to stick. But that is all immaterial. I could go on and discuss all of these and explain every one of them. But I don't think we ought to take your time. I think you can

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look at it and see that that which looked like confusion, turns out to be quite clear when analyzed.

Now, let's talk about absence of agreement. There was absence of agreement? The evidence, gentlemen, is overwhelming, there is an agreement.

The only thing that they say about that agreement is that Mr. Jonas might have been a little nervous. I don't know whether he was nervous or not. And I don't know whether Mr. Stroupe was nervous, Grady or Bob Stroupe. I don't know whether Mr. Buchan was nervous, but we had to pull it out of him, the truth.

So they put Mr. Jonas on trial. But they don't say one word about Hearn. Where was Hearn? Where was Hearn? Hearn calls Jonas. He tells him, "Now is the time to do it. They are all agreed. It is up to you. You are a factor in this. I am going out of the business."

He is still the son-in-law and he still goes back and signs the letter. "But you fellows have been having a price war and you ought to get together. Now is the time to do it." And Jonas, as well as Stroupe, indeed, and Buchan, all corroborate each other, all of their testimony.

Was it false? Then where was Hearn? Why didn't they bring him in? Kenneth Hearn calls Lenoir at 10:30

## Colloquy.

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at night. Gordon is to call him back. Gordon calls back. Hearn then calls him. Then there is a telephone bill, Jonas calls Asheville. He says he spoke to Hearn. They want to get Virginia out? They want to get the others out? Why didn't they bring Hearn in? If Jonas is such an unmitigated liar, where was Hearn?

You will recall, gentlemen of the jury, that we submitted several documents in evidence: One, these tickets of Hearn, and another group of documents. You will recall Mr. Humrickhouse grabbed those tickets as if they were holy.

I said, "Hold on. We want to put them in evidence." We put them in evidence. What do they show? We could have called witnesses after witnesses to go over the same thing, which was already proved, but why waste all that time? Why, when the case is so amply proved beyond any reasonable doubt?

But, if they picked up the tickets, they would show these significant telephone calls all at this time of the conspiracy. Buchan calls North Wilkesboro on October 23, 1954. Any explanation? Buchan calls North Wilkesboro on October 27, 1954. Any explanation?

He testifies so vividly about what he said to all the other mirror manufacturers there, Pittsburgh Plate

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Glass, Virginia, and Carolina, and Weaver and all the rest, let alone Galax and Mount Airy, and he calls Wilkesboro on the 27th, and he talks six minutes. This is all Exhibit 85.

Then he calls Wilkesboro again on October 27th, and he speaks 11 minutes and then he calls Wilkesboro again on October 27th, and he calls for three minutes. Then he calls Wilkesboro again, Buchan, on October 27th and he talks ten minutes.

Certainly he is calling. That conspiracy is hot. Messer is hot. They are all ready to go. There is a lot doing there. There is no explanation. Then, we find in this very same Exhibit, Exhibit 58, that Mr. Hearn makes some calls in

### *Colloquy.*

addition to those of Jonas. He calls October 27th to Galax. What is the explanation, Where was Hearn to explain this?

He calls Martinsville October 27th and talks about eight minutes and nine minutes to Galax, too. Where is Hearn? What is the explanation? I could go all through this.

Let us not try Jonas; let's try the defendants. Because, Jonas, gentlemen of the jury, is not on trial. Those indicted in the wisdom of the grand jury are on trial. When a case is made out against them, it is incumbent upon those defendants who are put on trial.

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to defend themselves if there is a defense.

Jonas was not impeached. He stood up on cross examination, such as it was, by Mr. Rogers. Indeed, Buchan was not impeached nor was Grady Stroupe or Bob Stroupe in essential matters. They all agreed with Jonas.

They called Jonas and they told him what happened at Asheville, that they were all going along, that it was up to Mr. Jonas. That is the sense of everybody's testimony, as you will recall. Let us not take a sentence here and a sentence there. That is the context of all the testimony here.

The mirror manufacturers want to raise their prices. Messer wants to send a letter raising the prices to 78 per cent. Is there any question about that? Was that a conspiracy? Of course they don't come here and say, "We conspired," but was that a conspiracy?

If that was not a conspiracy, then we can never prove a conspiracy. That conspiracy is supported by the telephone tickets, the telephone bills, the letters on that weekend of October 29, 1954. Jonas was not refuted by anyone and he could not be refuted by anyone, as we showed you, by bringing in Buchan and Stroupe, ourselves.

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—They told, too, they did a little telling. It was not refuted, and they could not refute them and they did not bring in Hearn to do so. What happens at Asheville?

## Colloquy.

First, Messer went down after talking with his son, the son says, about getting prices up. Maybe he is tired of the competition that keeps prices down; he wants prices up. But it is clear that Messer said, according to Messer, Jr., they wanted to wait to see what the boys would do at Asheville, and that he did not feel he could raise the prices himself.

The question was: "When you were at Asheville or down at Asheville, you were talking to the various manufacturers and you were talking about raising the price or lowering the price. What was it?"

Answer: "We were talking about higher prices." And the Court brought it out as follows:

"Mr. Messer, you say you and your father talked about there had to be an increase in prices because you were losing so much money? That is before the Asheville meeting?"

Answer: "Yes, sir."

"The Court: When you talked about the necessity of increasing prices, didn't your father say that you would have to see what the other manufacturers would do,

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because one man could not increase his prices and leave himself at the mercy of others?"

Answer: "That is right."

"The Court: Didn't he say that before you went to Asheville?"

"The Witness: That is right. Of course, it all ties together."

Now, gentlemen of the jury, it is clear from all the corroborated testimony from each side we put on the stand, that the mirror manufacturers wanted to raise their prices, that Messer wanted to send a letter raising the price to 78 per cent off the list, and they told that to Jonas.

Messer wanted to raise the prices and he wants a letter. Then what happens? There is a meeting at the Bluffs. This meeting at the Bluffs is preceded by all this talk, by all these understandings.



### *Colloquy.*

They have consulted each other. They talked to Mr. Ketchum of Pittsburgh Plate Glass and Mr. Gordon. Sure. They talked about the glass shortage, but they talked about prices and they were told to get their prices up.

Much is made about the fact that Mr. Gordon is no longer a defendant, but that is a matter for the Court. But you cannot divorce what Gordon said and you

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can't divorce the telephone calls and you can't divorce the letters from Pittsburgh Plate Glass Company, because that is not a reality if you did.

The realities of the situation are that they were all in it from the beginning to end, and they all agreed and conspired.

So we have the meeting at the Bluffs. What is the first thing that is said?

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The first thing that is said is told by Mr. Stroupe. Grady V. Stroupe was asked—I thought I could get the transcript, but I can't find it; I have it written down—"What did you discuss in that bedroom at the lodge in Doughton Park?

"Answer: "I can't tell you in chronological order, but to the best of my recollection, the first thing that was discussed was Mr. Messer told us of his conversation and what he said at Asheville; that he was going to send out a letter lowering the discount to 78, by which the prices would be raised."

And then the story is told that they mentioned the prices. They agreed on 78, and Mr. Messer said, "The letter has got to go out on the same day by everybody," and they sent them out. Then after the Bluffs, calls had to be made.

Mr. Jonas was asked whether there was anything said about notifying others, and he, refreshing his recollection, said, "I undertook to call Pittsburgh Plate Glass Company and a couple of others," and he understands the others were



### *Colloquy.*

going to make some calls, too. But he knows he had to make the calls, so calls were mentioned. And he calls Pittsburgh Plate Glass Company and he calls and wants to talk to Gordon.

He reaches Prichard. Prichard said nothing to

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refute what Mr. Jonas said. Whether he did would be immaterial because Pittsburgh sent a letter. But something was said about it, so let us see. What kind of questions was Mr. Prichard asked?

He was asked what we call conjunctive sentences, the "and" and the "ifs" and the "so forths." So that everything had to be exactly so to get a "no" answer or a "yes" answer and if one thing wasn't exactly so, you could say "No" or "Yes" as the case might be.

He was asked: "Mr. Prichard, there has been testimony by Mr. A. G. Jonas that he telephoned you or telephoned Pittsburgh on October 29, 1954 and talked with you and told you about a gathering at a place called the Bluffs, and that there had been an agreement regarding price, and asked that you convey his message to Mr. Gordon. Did Mr. Jonas make any such call to you?"

There is a witness on direct testimony. He is not under cross. There that question is very carefully framed and asked him, and he said he did not. Then he's cross-examined about receiving any call from Mr. Jonas, and he doesn't remember. You will remember the answers, "I don't remember," "I say, I don't remember."

"Could he have called?"

"Yes, he could have called."

"Would you say he did not call?"

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"I don't remember. I don't remember. I don't remember."

The telephone bill is here. The telephone bill shows there were calls made to the Pittsburgh Plate Glass Company on two occasions.

### *Colloquy.*

"Would you say that on October 29, 1954, you received no call for any purpose from the mirror company?"

"I didn't say that; no, sir."

"Would it have been possible for you to have received a call from the Lenoir Mirror Company on October 29, 1954?"

"Yes, it would."

Then he was asked, "Do you remember receiving the calls?"

"I do not remember. I do not remember. I said I do not remember."

Then came a redirect question, and that was carefully phrased. Listen to this question. This is the "if" question.

"Now, Mr. Prichard, Mr. Karp has asked you about the possibility of a number of telephone calls, about a number of subjects. I want to ask you if, during the telephone calls on October 29th or November 1st, if made by Mr. Jonas to Pittsburgh wherein he may have talked to you, if Mr. Jonas told you anything about a Bluffs

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meeting or asked you to convey to Mr. Gordon any message regarding the Bluffs meeting?"

Then the answer came he did not.

Was it necessary, gentlemen of the jury, for Mr. Jonas to have given the information in exactly that way? Was it necessary for Mr. Jonas to say to Mr. Prichard, "We met at the Bluffs"? Could he have said, perhaps, "We met on the parkway," or "We met," or could he have said nothing about meeting, that he was sending a message? Or could he have said, "I am going along on 78 percent, and Messer wants letters sent out by everybody."

That is the essence of what Jonas said he said. Is that the way you break down that statement of Mr. Jonas? Did they cross-examine Mr. Jonas on that and try to break him down? No, they came with the "if" questions, the "and" questions, which do not refute it at all.

### *Instructions to the Jury.*

So the messages are sent. We have the discussions in Asheville. They are all there, every one of the defendants. We have the contact with Jonas. We have the Bluffs meeting, and Jonas then calls, with another telephone ticket unrefuted, one additional person in addition to these he is assigned to call, and that is Mr. Edd Gardner.

I explained that this morning. That was because Jonas wanted to make sure that his main competitor over

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there in Carolina was going to go along. It is clear he is told that Carolina is going along. And then these calls are made; and the letters are sent, five letters on October 29, 1954.

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The Court: I will allow you about five minutes more, Mr. Karp.

Mr. Karp: Yes, sir. That is all I need, your Honor.

And then Stroupe sends a letter. Stroupe has failed to submit letters before. He explained here why he didn't to the other two Grand Juries. We find the existence of the letters. His letter is dated October 30, 1954. PPG's letter is dated November 1, 1954. What is the explanation as to the differences in dates?

Messer says, "We got to send a letter the same day." Five do it the same day, and the other two on the week end. What does Mr. Stroupe say about that? He says that he didn't like the idea of sending letters on the same day. He didn't oppose fixing the price at 78 percent. There is evidence in here on that point.

He didn't want to send the letter the same day. I asked him, "Was it that or a question of appearances if a letter was sent at the same time?"

Answer: "I will be frank with you. I thought of the appearances, too, but I did think of the economic,

*Instructions to the Jury.*

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situation.

“Question: When you say you thought of appearances, what appearances are you referring to?”

“Answer: I am referring that it would look like we had gotten together and fixed prices.

“Question: So you thought it would be better if you were to send the letter a little later than the others?”

“Answer: Not necessarily me, sir.

“Question: Anyone?”

“Answer: Anyone; yes, sir.”

He didn't like to have it look like they were fixing prices. “So let's not all do it together. Let's some of us send it at a separate date.” He sends the letter on October 30, 1954. Pittsburgh Plate Glass send its letter on November 1, 1954. Pittsburgh Plate Glass tries to make a fairy tale about the letter. You could not find out who sent the letter. But the letter was sent. It was sent. And it is signed not by any branch. It is signed Pittsburgh Plate Glass Company, and there is no fairy tale.

There is no mystery at all in the light of the facts and circumstances. The realities are clear. That is how conspiracies are made. That is how conspiracies are carried out. That is how they were caught, by the

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documentary evidence, first. That is how they were caught. The rest fitted in like a glove. All the testimony fits in like a glove.

Gentlemen of the jury, I thank you for your patience, I thank you for your forbearance. I ask you sincerely to weigh the evidence clearly and when you have, there can only be one verdict: Guilty beyond any reasonable doubt, beyond any doubt whatsoever. Thank you.

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*Instructions to the Jury.*

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The Court: Gentlemen of the jury, we have come to the end of a trial which, frankly, I feel has been unnecessarily long. You no doubt noticed that last week and in the week before at times I have been pretty irritable. I have snapped and snarled at attorneys, and displayed a good deal of irritation and impatience.

It was largely due to the fact that I thought a great deal of testimony was being introduced in the case which was immaterial and confusing, and which did not relate to the real, simple and main issue in the case. I do not excuse either the Government or counsel for the defense from that criticism.

I think we had an unnecessary amount of evidence in this case, considering the relatively simple issue in it, and I would be less than frank if I did not say that I think the arguments today displayed the same evil, if you want to call it that, or the same faults, let us say.

I think they have ranged over a great deal of immaterial matter. I am going to try, if I can, to detail to you what I think, in my opinion, is the simple issue in the case. I want to first of all say that if in the course of anything I say I comment upon the evidence, or seem to indicate any opinion as to the weight of the evidence or the credibility of witnessess or

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anything of that sort—I try to avoid it as far as possible—if I do, I am merely expressing my own opinion, by which you are in no way bound. You are the sole judges of the facts of the case. You are the sole judges of the credibility of the witnesses. You are the sole judges of the weight you are going to give to their testimony and you should not be influenced by anything that I say except as it might be helpful to point out to you salient facts in the case.

But expressions of opinion on my part are not in any way binding upon you, and you are perfectly at liberty to ignore them if they do not agree with your own opinions.



## *Instructions to the Jury.*

That is particularly important, I think, in view of the wide spread that the testimony has taken in this case which, as I have already indicated, I consider a large part as being of not great importance.

I want to caution you also on this, that statements by counsel in the course of their arguments are not evidence. It is the tendency of all attorneys representing a cause on one side or another in their zeal and earnestness to see the testimony of witnesses in the light most favorable to them, which is natural.

It is also their tendency and legal right, a perfectly legitimate thing to do, to pick out the parts of the testimony of a witness which appear to be favorable

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to their client and to ignore entirely that part of the testimony that is unfavorable to their client. That makes it particularly desirable that you should remember all of the evidence in this case. I admit that that will be a rather difficult job in view of the length of the case, but that is your task, that is what you are in the jury box for, to hear the evidence, to listen to it, and to bear it in mind, all of it, whether it is favorable or unfavorable to these defendants.

Counsel for the Government may have emphasized certain phases of the evidence, and counsel for the defendants may have emphasized other phases of the evidence. Do not let yourselves be carried away by either exhortation, and you remember all the evidence in this case as far as you can, and apply it.

**1284**

First of all, I want to say to you, to state to you, the rule that governs all criminal cases when it comes to determining the guilt or innocence of persons charged with a criminal offense. The fact that people have been indicted is no evidence of guilt. Indictment merely represents a charge which has been made and the burden is upon the Government to

## *Instructions to the Jury.*

prove the guilt of the defendant before it has a right to ask that they be convicted.

And they must prove that guilt beyond a reasonable doubt. Reasonable doubt is just exactly what the term "reasonable" itself, means. It does not mean that crime or any criminal action has to be proven to a mathematical certainty or beyond all possibility of mistake, but it also means that people ought not to be convicted on mere suspicion or the possibility that they have committed the offending act.

It is best summed up by saying that after you have considered all of the evidence in the case, apply to it your conscientious judgment and reason. If you can say that there remains in your mind no reasonable question of the guilt of the defendants, then you have been satisfied to the extent that the law requires for a conviction.

If you have not been satisfied to that extent, then the defendants should not be convicted.

### 1285

In this case, the defendants are charged with having violated those provisions of what is commonly known as the Sherman Act, a Federal law of longstanding, sometimes referred to as the Anti-Trust Law. This action is directed against restraints of trade in interstate and foreign commerce and, insofar as pertinent here, provides that every combination or conspiracy in restraint of trade or commerce among the several states is hereby declared to be illegal, and every person who shall engage in any combination or conspiracy hereby declared to be illegal shall be deemed to be guilty of a misdemeanor.

The charge with which you are concerned is the fixing of a discount off identical price lists for plain mirrors. Specifically, the charge here is that the defendants, in the latter part of October, 1954, agreed to quote to furniture manufacturers a uniform discount of 78 per cent off the 1950 list.

If you gentlemen of the defense counsel have copies of the instructions I gave you this morning, you will note that

### *Instructions to the Jury.*

in the third line from the bottom there, I made an alteration by saying in the latter part of October, 1954. There had been a misstatement there in which I spoke of the weekend of October 29, 1954. It is not

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important. The indictment charges that the defendants in violation of the anti-trust laws, have combined and conspired to restrain interstate trade and commerce by an agreement, understanding, and concert of action.

It is charged that the combination and conspiracy consisted of an agreement to stabilize and fix prices for the sale by the defendant corporations of plain plate glass mirrors to furniture manufacturers by agreeing upon and using identical list prices covering over 2,000 sizes of plain plate glass mirrors as a base for the quotation of prices for such mirrors and by agreeing upon uniform discounts to be applied to such identical list prices.

As you gentlemen will recollect, it was conceded here that all of these manufacturers had uniform list prices, which was referred to as the 1950 list, and their method of varying prices was to vary the discount from time to time.

The charge here is that on that 1950 list price, which was identical with all of them, that they agreed then upon a uniform discount. The gist of the offense under the law is in the act of conspiring, that is, in agreeing or joining together or acting together under a common understanding to fix or stabilize prices.

The word "conspiracy," which is ordinarily used in

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the law and is used in the statute, has no particularly technical meaning. It involves nothing of mystery. A conspiracy is an agreement or understanding among two or more persons to do an unlawful act, and it exists wherever there is a combination, agreement or understanding between two or more persons for committing such unlawful act.

### *Instructions to the Jury.*

The crime is the conspiracy or understanding itself. It is not necessary in the existence of a conspiracy that the persons involved should themselves have called it a conspiracy, and it is not necessary that they should get together and enter into any formal or definite agreement to do things which they intend to do, or that they should all agree formally upon the details of the plans by which the unlawful combination should be made effective.

The offense is sufficiently proved if the jury is satisfied that two or more people acted together in the accomplishment of an unlawful purpose, and that in this unlawful purpose, they acted with mutual or common understanding as to the purpose to be accomplished and cooperated together in the accomplishment of this purpose.

It will be plain to you that a conspiracy may be and in fact often must be shown by circumstances rather than by definite proof of an actual agreement.

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Persons violating the law do not customarily make their plans known to the outside world and it is usually necessary in considering whether or not a conspiracy exists to consider all the facts and circumstances in the case.

The existence of a conspiracy may be proven directly or by facts and circumstances from which it may be logically inferred that there was, in fact, a common understanding. Its existence may be proven directly or it may be proven by a combination of the circumstances and by the direct evidence.

The fact that particular defendant played a lesser or even a minor part in the conspiracy in no way lessens his guilt. In the contemplation of the law he is as guilty as any dominant member of the conspiracy.

If a defendant having knowledge of the conspiracy knowingly participates with the conspirators for the purpose of assisting in the common design, then he becomes a party thereto and is as equally guilty as the originating conspirator.

### *Instructions to the Jury.*

Of course, a person could not participate in a conspiracy without knowledge of it, without knowledge that he was acting in a common understanding with other people. It is necessary that there should be a common understanding or agreement, which, of course, does not

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have to be in writing and which does not have to be formal in any way. But the acts complained of have to be the result of a common understanding among the group with knowledge of what they intend to do.

Those who engage in an unlawful combination or conspiracy to fix prices violate the law merely by entering into such an agreement or understanding, and it makes no difference whether or not the objectives of such conspiracy or agreement are carried out in whole or in part.

In order to establish the crime charged here it is only necessary that a conspiracy or agreement or understanding be established. The Government is not required to prove that the defendants or any of them intended to violate the law or intended to restrain interstate commerce.

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If the jury finds that the defendants, or any two or more of them, agreed to combine to fix or stabilize prices of commodities moved in interstate commerce, their intent in entering into such agreement or combination is immaterial.

Since all conspiracies to fix or stabilize prices are prohibited by the Sherman Act, it is immaterial whether any particular price-fixing scheme resulted in higher or lower prices, or whether the scheme is wise or unwise. Whether there was a glass shortage or whether there was a price war or whether there existed competitive evils in the mirror manufacturing industry are not defenses to price fixing.

The fact that the motives of the members of the combination might have been to improve conditions in the mirror manufacturing industry is not a defense, and it is not



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*Instructions to the Jury.*

material that the activities of the defendants, if they entered into any such agreement as has been charged, may have been regarded by them as necessary to enable them to conduct their business properly.

The law condemns any agreement by two or more competitors acting together to determine and fix prices. The very gist of the offense, what the statute seeks to prevent, is any agreement to fix prices; and if any such agreement or understanding is entered into, it does not

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matter what the motives were; it does not matter what the effects or the business were; and it does not make any difference what the defendants did thereafter.

If you find and believe there existed any combination, conspiracy, agreement or understanding to fix prices for plain plate glass mirrors to be sold in interstate commerce to furniture manufacturers, then anyone participating in such combination, conspiracy, understanding or agreement must be found guilty of violating the Sherman Act whether or not such defendant itself engages in interstate commerce.

That has particular bearing on the situation of Mr. Weaver. As Mr. Weaver testified, they did no business in interstate commerce. They could be involved, however, if you believe they were participants to any agreement, because they agreed with other manufacturers who were engaged in interstate commerce, and the effect of their participation would be to fix prices on articles which were the subject of interstate commerce.

The law makes it unlawful for any individual or corporation to engage in such conspiracy. If interstate commerce is affected, it does not matter that a member of the conspiracy is not engaged in interstate trade and commerce, or that activities of such member may be intrastate in character.

## *Instructions to the Jury.*

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The antitrust laws apply to every member of a price-fixing group if he is found to have participated in a conspiracy or agreement to fix prices no matter whether his business is large or small, or whether he is in a position to control the market.

I think I have sufficiently explained to you gentlemen the nature of a conspiracy as it applies to the facts in this case. I hope I have done so. I believe I pointed out to you a minute ago, of course, that before any defendant can be found guilty of a conspiracy he must have knowledge that such conspiracy existed, and having such knowledge, he joined or participated in it.

The mere discussion of prices among defendants, or any of them, is not in itself a violation of law, and neither is the gathering of information concerning prices charged or proposed to be charged by a competitor a violation of the law.

The mere fact that defendants had the same announced prices for their mirrors is not in itself a violation of law, nor would the mere fact that the defendants sent out letters at or about the same time announcing identical price quotations constitute in itself a violation of law.

Don't misunderstand what I mean, gentlemen. I mean that those separate acts which I have mentioned, standing alone, do not constitute a conspiracy. None of these

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acts, taken separately, is a violation of law, but they are all matters which you should consider in determining whether or not the actions taken by the defendants in this case were the result of an agreement or understanding among them, and if you find that they were, then the defendants would be guilty of a violation of law.

Considerable evidence has been introduced, and a considerable part of the argument of counsel for the defendants was devoted to the matter of the prices which these defendants were actually shown to have charged their cus-

## *Instructions to the Jury.*

tomers, or the amounts that they received from their customers, following the date on which they were charged to have entered into this unlawful agreement.

You may take into consideration the actual prices charged by defendants as disclosed by the evidence in this case. It is supposed to be embodied in that chart over there. In this tabulation which I have, it shows that during the month of November, some of these defendants received larger sums for goods which were sold below the 78-2 discount than for goods that were sold at or about that.

You will remember that the Government's charge is that as a result of this agreement, these defendants here sent out letters fixing the uniform discount of 78 percent off the list price, plus the two percent cash discount

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which seems to be customary in the trade.

This tabulation indicates that all of them sold some goods below that price, and some of them received a larger part of their income during the month of November from goods sold below the alleged unlawful agreed discount.

I want you to draw very carefully the distinction which I am now going to make to you. That evidence was permitted for the one purpose of showing, or for its bearing, I should say, on the question of whether or not these defendants had actually entered into this understanding or agreement.

The argument of the defendants is that on the showing made here, where they sold goods much below—or rather, they sold a large quantity of goods below—the 78-2 discount, shows that they never had any agreement about the 78-2 discount.

It was introduced for that purpose only. Of course, it may show that, and you are entitled to consider that. It may show that none of them lived up to the agreement after they made it, if they made one. It may show that they started undercutting each other right away after they made

### *Instructions to the Jury.*

the agreement, if they made one, or it may show that they had a large number of old and welcomed customers that they did not want to lose, and to whom they felt it

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was necessary to cut prices below the agreed discount. Or it may show that they became convinced that their whole plan was unwise and should be abandoned.

The distinction I want you to draw is this: While this testimony as to the prices which they charged in November, which was immediately following the date of this alleged agreement, is admissible as bearing on whether or not they did enter into an agreement, it is for that purpose only, and if you believe that the agreement was entered into at Asheville or consummated up there on the parkway, then it does not make any difference what happened afterwards.

Do you draw that distinction? Keep it in mind, because if you would be satisfied to the degree that I have instructed you that an agreement or understanding was entered into as charged in this indictment, then the fact that they did not observe it does not make any difference, because it is the agreement itself which is the thing that the law forbids.

But this evidence should be considered by you in determining whether or not you think they made any such agreement. I want to say this to you, gentlemen: You are the sole judges of the credibility of the witnesses and the weight you want to give to their testimony. I do not think it is improper for me to comment on the fact

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that the defendants in their arguments have made a rather savage attack upon the witness Jonas. Mr. Rogers referred to the intense hostility and bitterness which Mr. Jonas had displayed for Mr. Messer. I am frank to say I did not see anything in Mr. Jonas' testimony that was any worse or as bad as what Mr. Messer's own counsel said about him in the opening statement, when he said he had the reputation of being a price cutter and a double-crosser, and I think it is



### *Instructions to the Jury.*

not improper to say that Mr. Jonas' testimony is in no way denied in any substantial particular.

I am not vouching for his testimony, nor am I a partisan of Mr. Jonas'. But I think the attack on him is something that I can find no justification for in the evidence in this case. You may think differently, and you are perfectly entitled to think differently if you do think so.

His testimony was corroborated by Mr. Stroupe, and I think also you are entitled to consider the fact that if any light could have been thrown on this case, that it is strange that Mr. Hearn was not called here to throw light on it. After all, gentlemen, a trial is a pursuit for the truth, and any witness who can throw light upon it, or who can help to bring out the truth, and who is not produced, is something that you can consider.

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Mr. Karp commented on that in his closing argument, and I don't think his comment was in any way improper. On the contrary, I think it was quite pertinent. It is particularly pertinent in view of the fact that these witnesses, all of them, or representatives in some way of the defendants themselves, have testified that Mr. Hearn, in his hotel room in Asheville, undertook in one witness' words, to act as sort of a missionary, to get the price war stopped, and that it was Mr. Hearn who arranged the meeting on the Blue Ridge Parkway.

He could have told us—I don't know what he would have testified. I am not suggesting for a minute the essence of what he would have testified to, but I think he should have been produced to help this jury ascertain the truth in this case.

Gentlemen, as you know, during the course of this case I dismissed the indictment as to Mr. Gordon, because, as I told you then, I could find nothing to indicate that he was a participant in any agreement or plan to raise prices. He was undoubtedly at Asheville, and people consulted him



### *Instructions to the Jury.*

about various things, and he gave information to Mr. Jonas, I believe he said. The people up there were talking about raising prices, and Mr. Jonas was talking to him about it, but there was nothing to indicate that Mr. Gordon himself was conspiring in any agreement about price fixing.

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There remain in the case, as defendants, the seven corporations, I believe: The Pittsburgh Plate Glass Company—and I might say as to them it is charged that their activities emanated from their High Point office, at High Point, North Carolina, from which the letter was sent out.

There is the Galax Mirror Company of Galax, Virginia; the Carolina Mirror Company, North Wilkesboro, North Carolina; Mount Airy Mirror Company of Mount Airy, North Carolina; Stroupe Mirror Company of Thomasville, North Carolina; Virginia Mirror Company of Martinsville, Virginia; and the Weaver Mirror Company, of Rocky Mount, Virginia; and two individual defendants, Edd F. Gardner, the president of Carolina Mirror Company and Mr. J. F. Messer, who is the chairman of the board of directors of both the Mount Airy Mirror Company and the Galax Mirror Company, I believe. He has a controlling interest or controls the business policies of both of those corporation.

That is nine defendants. You might believe that some of them participated in this agreement or understanding, conspiracy as it is named, and you might believe that others did not. You are at perfect freedom to find all of them guilty or all of them not guilty, or you can find some of them guilty, if you believe

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they were, and you can find some of them not guilty, if you believe they had no part in it.

I think that is about all that is necessary for me to say to you, unless counsel can suggest something that I may have overlooked.

### *Instructions to the Jury.*

Mr. Humrickhouse: Your Honor has not stated anything about the presumption of innocence.

The Court: I think I did.

Mr. Humrickhouse: I did not hear it, then.

The Court: I think I started off by telling the jury that the indictment was no evidence of guilt at all.

Mr. Humrickhouse: You said that, sir.

The Court: It is merely a charge. Every defendant in every criminal case is presumed to be innocent until his guilt is proved. The burden is upon the Government to prove it to a reasonable doubt in accordance with the principles which I did state to you.

If there are no further suggestions—

Mr. Gilmer: You meant beyond a reasonable doubt, I take it. You said to a reasonable doubt, but you meant beyond a reasonable doubt.

The Court: They have to prove the guilt to the point where you can say you have no reasonable question about their guilt. If you do have a reasonable question

1300

about the guilt, or of all of them or any one of them, then you should find them not guilty.

The evidence on these defendants is somewhat different. I did not want to start commenting on the evidence, but I think it would be, in fairness to say that on the Pittsburgh Plate Glass Company, it largely revolves around the sending out of that letter establishing the 78-2 discount.

The same is true as to Mr. Weaver or of the Weaver Mirror Company. Mr. Weaver himself has said it was a pure coincidence that he happened to send it out. If you believe that that letter that Mr. Weaver sent out, dated October 29th, in which he fixed the 78-2 discount, if you believe that the sending of the letter on that particular date and fixing the same discount as everybody else was a pure coincidence, that he knew nothing about an agreement on the part of the others, he would not be guilty.

### *Instructions to the Jury.*

He would not be guilty unless he did these things or participated in these things with some understanding that he was acting in conjunction with the others. The same would be true of the Pittsburgh Plate Glass Company. But these corporations can be found guilty, gentlemen, without any proof as to who was the author, what individual was the author of the letter.

1301

If that were not true a corporation could enter into agreements of this sort and simply send out a letter signed, "The Pittsburgh Plate Glass," or signed "Galax Mirror Company," or "Mount Airy Mirror Company," without any indication of who dictated the letter or who authorized its being sent out.

So there is no necessity of proof as to who authorized the letter as an individual. That is, as to what member of the concern was the author of the letter or who was responsible for sending it out. If it went out over the name of that company, that company is responsible.

Do you gentlemen want to take this case under consideration this afternoon, or would you rather wait until the morning?

Well, I will tell you what I will do. I will let you go to your jury room. The first duty that you will have will be to elect a foreman from out of your own number, and his duty will be to preside over the deliberations of the jury, to give everyone a chance to express his views and have him courteously listened to without interruption or interference, and conduct the whole deliberations of the jury in an orderly manner.

Also, it will be his duty, of course, to take the vote of the jurors on the question of guilt or innocence, and to sign any verdict that the jury might reach. There

1302

have been a great many exhibits introduced in this case. You do not have to take those exhibits to the jury room

### *Instructions to the Jury.*

unless you want them. I certainly would suggest that you did not bundle up that great mass of exhibits and take them up there, but there may be particular ones that in the course of your deliberations you would feel desirable to have and to examine and in that case you can send for them.

I am not going to urge you to take the whole bundle up with you at once unless you want to. I suggest, gentlemen, that you retire to the jury-room and elect your foreman and get organized. Maybe you might have some preliminary discussion. If you have not reached any agreement or verdict by five o'clock, or something like that, I will excuse you until morning.

Mr. Humrickhouse: Your Honor, may we state our objections and exceptions in the absence of the jury before they start deliberations?

The Court: Unless there is something new that you really think the Court might correct itself on—

Mr. Humrickhouse: I understand that. There were one or two matters that I hoped your Honor might consider I wanted to give your Honor that right, if you please. I think we should do it in the absence of the jury.

1303

The Court: I believe the rules say the objections should be made before the jury retires, do they not?

Mr. Humrickhouse: But they also say, if your Honor please, that opportunity shall be given out of hearing of the jury. I don't think it is a matter of great moment, but we think both sides should be able to do that.

If we make our observations in the presence of the jury, then I don't believe it is proper.

The Court: I agree with you on that, but what I was getting at was this: When we were discussing instructions this morning, and I told you in substance what I was going to give as instructions, I understood then you wanted to register your objections.

### *Instructions to the Jury.*

What I am getting at is, is there anything that you really feel ought to be called to my attention before the jury retires?

Mr. Humrickhouse: Yes, sir.

The Court: All right, sir.

Mr. Humrickhouse: There are two matters.

The Court: All right, sir.

Thereupon, the Court and Counsel retired to Judge's Chambers for a conference on the record, and the following proceedings were had:

1304

Mr. Humrickhouse: If your Honor pleases, when we were in chambers this morning, we did not have your Honor's proposed charge. You gave it to us after you returned to the court: There are two matters in that that I wanted to call to your attention.

On the first page—and it is an unnumbered provision; it starts out, "The defendants are charged with having violated those provision"—

We object to the quoting of the language of the statute, "shall be deemed guilty of a misdemeanor," because we think that is calling to the jury's attention the fact that the punishment might be small and it is all right to go ahead and convict them because it is not a heinous offense.

We think that is improper commenting upon punishment in a case or the extent of a case, because the jury knows the difference between a misdemeanor and a felony.

Also, the latter part of it, your Honor, we have gone over that several times, but that amends the indictment. We just wanted to register our objections there.

1305

The Court: Mr. Humrickhouse, that part of this instruction which quotes the substance of the statute was handed to you by the government counsel on Wednesday before we left here.



## *Instructions to the Jury.*

Mr. Humrickhouse: I know your Honor will believe me when I say I didn't see it until after you handed this to me today. He quoted it in his opening argument, but I wanted to give your Honor an opportunity to correct it.

The Court: All I did was to add to that, in order not to have so many sheets, another instruction which the government tendered, and combined them in one.

Mr. Humrickhouse: But as we understand the rules, your Honor, if we didn't object, we haven't waived anything if we make the objection at this time.

On the one numbered three which you have, we object to your Honor's language in failing to add in the next-to-the-last sentence of the first paragraph—it starts off "The indictment charges that the defendants", and your Honor goes on to say "for such mirrors and by agreeing upon uniform discounts."

Our objection to that is that the indictment charges by agreeing and applying uniform discounts, and your Honor has left out the words "and applying".

1306

On 4, while it may be covered in the latter part of your Honor's charge, your Honor says that a conspiracy to fix or stabilize prices, all conspiracies to fix or stabilize prices are prohibited. Of course, that is not so. They must affect interstate or foreign commerce, and we think your Honor should have said so.

Under 5, we think your Honor should have added "if you find and believe beyond a reasonable doubt that there existed a combination, conspiracy or agreement", and so forth, that there should be the introduction of the words "beyond a reasonable doubt".

As to number 8, when your Honor has given in substance some of the requests handed in by the defendants, your Honor has taken those and added a finding of guilt charge at the conclusion. It is regarding the specific things. Your Honor, rather than saying that those could be circum-

### *Instructions to the Jury.*

stances upon which there could be a finding of not guilty, has stated that they would be sufficient to consider and determine guilt.

I have only one other matter, if your Honor please, and it is your Honor's remark that a trial is the pursuit of the truth. We think your Honor's language there shifts the burden in a criminal case to the

1307

defendant, and that your Honor has told the Jury that it is up to the defendants to get at the truth if the government hasn't done it. We don't think that is the burden that we have.

Also, your Honor has said there has been no denial of the testimony of Mr. Jonas in any substantial particular. It must have been a substantial particular when government counsel continued to argue about the efficacy of the telephone call. Now is the time we think you ought to tell the jury that that telephone call didn't make any difference if it did go in.

I have no further suggestions, except our general objections.

The Court: I have no objection to telling the jury about the telephone call.

Mr. Humrickhouse: That it is immaterial?

Mr. Karp: On the Pittsburgh, your Honor, we have an objection to that, that charge that the corporation is tied in only through the High Point warehouse. The evidence concerning participation by its officers at Asheville, telephone conversations, knowledge, and so forth, all of those aspects should be considered by the jury in considering whether the corporation participated.

1308

The Court: I think my language was that the letter emanated from the High Point warehouse.

Mr. Humrickhouse: Your honor said that. Your Honor understands that the formal objections we have heretofore

### *Instructions to the Jury.*

made still stand. . The only purpose in this is to give your Honor an opportunity to correct any errors which your Honor may feel on points which were included in the charge.

The Court: I don't think your objections are any ones I should consider other than correcting that statement on Mr. Jonas' testimony.

Mr. Gilmer: In view of the fact that your Honor did comment upon the testimony of Mr. Jonas before the jury, we would like for you to reconsider an instruction to the jury about receiving the testimony of a co-conspirator.

Mr. Lee: May it please your Honor, you stated that Mr. Hearn should have been called as a witness. I think you probably should have added to that that the government has a right to call him, too. The implication that I got, of course, being from the defense side of the table, was that your Honor really thought that the defense should have called him.

The Court: I certainly do think you should have called him.

1309

Mr. Lee: Well, Weaver shouldn't have called him. I don't see where we should have.

The Court: Maybe your client should not have, but he did not have anything to do with him, maybe. Hearn is the man who has been described as starting all of this. He was the missionary up there at Asheville, who called Jonas to get him in; he arranged the meeting up on the drive, and so forth. If those things were true, if the testimony of those witnesses and what happened at Asheville and on the drive is true, there is no doubt but what your clients are guilty. I do not know about yours, but these others are.

If they are not true, Mr. Hearn could have denied it all.

Mr. Lee: But I got the implication that I should have put him on myself.

Mr. Humrickhouse: Someone has suggested that you have not discharged the alternates. Before the deliberation begins, shouldn't that be done?

### *Instructions to the Jury.*

The Court: Yes, before the jury goes to their room.

And Thereupon, the Court and Counsel returned to the courtroom and the following proceedings were had:

The Court: Counsel have called my attention to several matters concerning them in the charge. They

1310

called my attention to the fact that I had said that Mr. Jonas' testimony was uncontradicted in all material matters and all important matters. There was one contradiction that I remember now, which was called to my attention, and I don't know whether there were any others or not. There was testimony about him calling up to Pittsburgh in an effort to talk to Mr. Gordon. He was unable to get Mr. Gordon. He talked to Mr. Prichard, who testified here. Mr. Prichard denied that Mr. Jonas had given any message to him for Mr. Gordon, as Mr. Jonas, I believe, testified that he had. So there was that contradiction.

I considered it, I had that in mind, but I considered it immaterial inasmuch as I had dismissed Mr. Gordon from the case. I didn't think attempts of Mr. Jonas to communicate with him were of importance. But that fact was brought out, of this contradiction in the testimony.

Of course, that doesn't affect Mr. Gordon, who has been dismissed from the case. It may, however,—No, I don't think it would, either.

Another thing I want to correct, if I gave you a false impression, was I said that the charge here was against the Pittsburgh Plate Glass Company's High

1311

Point warehouse. I intended to say that the letter which went out, emanated, from the Pittsburgh Plate Glass warehouse. Of course, if it went out, and if it was a part of an agreement, it was directed to be sent out by somebody in authority of the Pittsburgh Plate Glass Company. But I did tell you that a corporation could be found guilty without any proof as to what particular official or person in

### *Instructions to the Jury.*

authority at that company was the individual who made the agreement or understanding, if one was made.

So the indictment here is not against the warehouse branch at High Point. It is against the Pittsburgh Plate Glass Company. If you believe that they were a party to this understanding or agreement in any way, of course, they would be in the same situation as any other corporation, providing, of course, you believe any agreement or understanding was ever reached.

I don't think there is anything else that is necessary to say at this time.

It is rather late now. I expect, rather than to hold you longer, I had better let you go at this time. Be extremely careful about talking to anybody about the case, and do not let anybody talk to you about it. All the evidence in the case has finished now, and I have given you instructions. The

1312

matter is in your hands. Don't let anything happen that might cast a reflection on you. I don't distrust you. I want to assure you of that. But ugly people might say something about you that is completely unjustified and yet might have an appearance of truth because they had seen you talking to someone or making some mention of this case, or something of that sort. So be very careful when you go home tonight. Come back in the morning at ten o'clock, and we will take the case under consideration then.

•   •   •   •   •   •

1314

And Thereupon, the following Proceedings were had:

The Court: Is there anything that counsel wish to bring to the attention of the Court?

Gentlemen of the jury, on yesterday I completed my instructions to you; but there was one thing I omitted to say, which I felt was unnecessary, and which I expect is unnecessary. That is, in a Federal Court, juries are in no way concerned with questions of punishment.



*Instructions to the Jury.*

Some of you may have served on state juries, and you know that in state courts, juries not only determine the questions of guilt or innocence, but if they find a defendant guilty, they ordinarily determine the punishment. The practice is different in Federal Courts.

The duties of the jury and Judge are distinctly drawn. The juries are the tryers of the facts, and they report to the Court on the fact of whether or not the defendants are guilty or not guilty, and the disposition of the defendants after that is a matter for the Court to decide entirely.

I wanted to make that clear to you, in case there was confusion in the minds of any of you.

I know of no reason why you should not retire, but first I will have to ask Mr. Brown and Mr. Garland, the two alternate jurors, to stand aside. You gentlemen were selected as alternates because it was thought that

## 1315

the trial would be long continued and someone might get ill, or for some reason or other would be unable to continue. We have been very fortunate in that.

In this winter season, with variable weather, and the presence of influenza, and the usual winter disabilities that come along, the severe colds and things of that sort, have not occurred. We are very glad that no one has been ill who has had to retire from the jury, but the statute provides that the alternate jurors hear the case along with the regular jurors, up until the time that the regular jurors are instructed and then they are retired.

Mr. Brown and Mr. Garland, the two alternate jurors, may stand aside.

Now, gentlemen, I will ask you to go up and begin your deliberations. I think you should have with you the indictment, because it states the offense, and also because it gives you the names of the persons against whom the charges have been brought and who are on trial.

*Instructions to the Jury.*

I will repeat to you again I certainly would not urge you to take the whole mass of exhibits unless you feel a need for them. If you want to take them, you are perfectly at liberty to do so, or you are at liberty to call for any particular exhibits you may want after you have gone to the jury room.

## 1316

Your discussions may indicate the need of them. My instructions were somewhat lengthy. If at any time you should be in confusion or if there is a difference of opinion as to what I intended by anything I said, you are at liberty to come in and ask for further instructions or for clarification of what I have said.

I trust you will not have to do so. I hope I made myself clear enough. It is always possible I did not.

I have here in substance, well, practically in its entirety, the written instructions. I gave them to you verbally. There were some comments I made, particularly toward the end, which have not been typed off, so these are not complete. But if you get into any difference of opinion as to what I said or what the applicable law is, you may call for further clarification.

Now you may retire.

And Thereupon, the jury retired to their jury room to consider their verdict.

## 1317

The Court: Mr. Brown and Mr. Garland, you may be discharged for the term. I regret to have kept you here the two weeks or more and then not be able to utilize your services, but you understand the situation exactly.

I appreciate particularly, Mr. Garland, you being here because I think you had been rather ill just before you came. I wrote to you and told you that we needed your services, but if you did not feel well enough to come, let me know. But you definitely wanted to do your duty as a juror and I appreciate it.

### *Instructions to the Jury.*

Mr. Garland: Thank you.

The Court: You gentlemen are discharged for the term and if you go to the clerk's office you will get certificates showing the time you have attended here.

Certainly, Mr. Brown, I think you have been here since the 11th or 12th of November, have you not?

Mr. Brown: Yes, sir, I have.

The Court: When you get your certificates from the clerk, the marshal's office in this corridor will give you compensation.

Mr. Humrickhouse: If your Honor please, I think I have made myself clear, but I have looked over the record regarding my objections and there doesn't seem to be any indication of my disagreement with your Honor regarding the corporation acting through an individual.

1318

I just wanted to be sure that we had reserved our exception. I think we have, but I just wanted to call it to your Honor's attention.

The Court: All right, sir.

The marshal has said that the jury wants copies of the instructions. Several of them had notations.

I will ask my secretary to re-copy them, omitting references to the case citations.

Mr. Gibson: Your Honor, those instructions were incomplete, as you pointed out. They did not have the definition of reasonable doubt, as I recall it. Wouldn't it be better to take the transcript of yesterday and tear out the part that was in Chambers?

The Court: I have that. I will show you in a minute what I mean.

Mr. Humrickhouse: The point you are making, Mr. Gibson, is that they were not all in the written instructions. We do not think any should be given unless all are given and we think it is unusual to send any.

*Instructions to the Jury.*

The Court: The reporter took off last night and gave to me this morning what I had said that was extemporaneous. Attached to that is the typewritten instructions which I had given counsel a copy of yesterday.

Mr. Humrickhouse: We did not know what your Honor had. We thought it was what we had handed out to us.

1319

The Court: I have copies which the reporter gave to me. I had them on my desk this morning when I came in some-time ago.

Gentlemen, in the transcript of yesterday's proceedings, the reporter had the full instructions and everything that I said to the jury, but in there, there are some matters which took place back in Chambers. You will remember that you said you wanted to register objections outside the presence of the jury and we went back into Chambers and then came back.

I added a few words to the instructions regarding the testimony of Mr. Prichard and Mr. Jonas, and one other thing. I have forgotten what that was.

I am having the reporting staff take that transcript and omit everything relating to our conversation in Chambers and including everything that I said to the jury up until we adjourned yesterday afternoon.

Mr. Gilmer: Does that include the comments you made on the evidence?

The Court: Yes, sir. It includes everything I said to the jury.

Mr. Gilmer: Your Honor, we want to object to your sending to the jury room comments made by the Court on the evidence.

The Court: I understand you want to do that.

1320

Mr. Gilmer: We think that anything that is sent ought to be just the instructions themselves and not the Court's comments.

*Instructions to the Jury.*

The Court: A few minutes ago, one of you said that if you were to send anything to the jury room, you wanted to send everything that was said. What do you want?

Mr. Gilmer: I took the statement that was said a moment ago to mean that if anything was sent, all the instructions should be sent, not that everything that was said should be sent.

The Court: I was trying to satisfy you by sending everything that was said.

Mr. Gibson: I had in mind, your Honor, that some of the instructions at the time you were giving the instructions themselves, you expressed verbally. As I recall, the definition of "reasonable doubt," I believe, you spelled out from the Bench and presumption of innocence. I think they were not included in the written copy.

The Court: That is right. That was the other thing that I think I referred to when I came back in here, sometime later after I finished my instructions.

Mr. Karp: Your Honor, the matters you are sending up does that include your remarks of this morning, the

1321

further instructions concerning the fines? I would suggest that go up, too.

The Court: I did not understand.

Mr. Karp: I would suggest that the statements you made to the jury this morning, concerning the fines, should go up as part of the instructions.

The Court: I think they can remember that. I do not want to put the typing staff to the trouble of typing that off. If you want everything that I said to the jury to go before them, all right. I was going to give them these instructions with the law of the case and then someone objected and said if anything went to the jury in a written form, they thought everything ought to go, so I am now prepared to let everything go.

Mr. Gilmer: I think your Honor misunderstood. Mr. Gibson just explained that to your Honor. He meant every-



*Instructions to the Jury.*

thing of the instructions themselves that you gave verbally in addition to the written instructions you had given. That was the only request that any of us made.

The Court: You could take that only by taking it from the transcript. As I went along with the written instructions, I interpolated from time to time as you were able to see.

Mr. Gilmer: Yes, sir.

The Court: You had copies of the instructions. You

1322

could see where I interpolated.

Mr. Gilmer: We simply feel that the comment by the Court on the evidence itself would be highly improper to send to the jury room as part of the charge. Your charge on the law is entirely different from your comment on the evidence. They requested the Court's instructions.

The Court: They are parts of what I said to the jury.

Mr. Gilmer: I am speaking now, your Honor, about the comment on the evidence you made.

The Court: Yes, sir, I know, and that is part of what I said to the jury.

Mr. Gilmer: We think it would be highly prejudicial to us for you to send that to the jury room.

The Court: Not any more highly prejudicial than when I said it. If it is prejudicial to you, it is prejudicial when I said it.

Mr. Humrickhouse: We would like to join in Mr. Gilmer's objections, your Honor.

The Court: I wish you gentlemen would get together and decide what you want to go to the jury.

Mr. Humrickhouse: I don't want anything to go to the jury, your Honor. I don't think it is proper to send anything to them.

The Court: That was not my intention, to send any part. What I said, Mr. Branch, of a minute ago, to

## *Instructions to the Jury.*

1323

recopy Defendant's Instructions No. 2 and 3—No. 2 had a citation of the case of United States against Falcone, 311 US, appended to it and No. 3 had a quotation from what I presume is a statement made by me in the course of this case.

I simply recopied the instructions, leaving out those two appendices. That is what I intended to send to the jury along with these other written instructions, until counsel got into confusion as to what they wanted.

Mr. Gilmer: Your Honor, I don't think there was confusion about that, just misunderstanding. We were talking about Instructions, of course, only. I think your Honor would agree that no counsel requested that you send your comment on the evidence to the jury room.

Mr. Gibson: I am sorry if I was not clear about that, your Honor. I certainly did not have in mind any request to send comments. I simply had in mind the instructions that had been given originally from the Bench.

Mr. Rogers: If your Honor please, I was out in the hall when this matter first started, and I am not sure I quite understood what was going on. In order that there may be no misunderstanding about our position, we think it better that no instructions of any kind be sent to the jury unless they are specifically requested.

1324

The Court: They have been. That is the reason I am sending them.

Mr. Rogers: I am sorry. I was not present. That is why I want to explain. We think then, only that the written instructions should go to the jury and not the comments of the court on the evidence.

The Court: I understand Mr. Gilmer's position and other attorneys' positions.

Mr. Rogers: I did not know whether that stipulation about one objection applying to everybody else was still in effect. We did want to object.

### *Instructions to the Jury.*

The Court: The only instructions I gave were those which were embodied in the stenographic record. I had certain written instructions here which had been tendered some of them had been modified, some of them granted in the exact language. But in giving them to the jury, I interpolated and expanded on them as I went along and explained some of them.

So the instructions that went to the jury are bound to be what I said from the Bench and are not embodied in that writing?

That is one reason I did not intend to send anything to the jury because I did not have it all in writing. Then, the jury sent down and asked if they could have the instructions. They wanted them.

1325

The only fair way to give it to them was to give them everything I said, including my interpolations, explanation, modifications, and so forth and that appears only in the stenographic record.

I am now asking that the stenographic force get that together, everything that I said to the jury, to be sent to the jury.

Mr. Gilmer: While we object to anything of it going up there, if your Honor is going to send it, we were requesting, of course, that you delete from that transcript the comment you made on the evidence outside of the instructions.

The Court: I understand perfectly what you are requesting.

Mr. Karp: It is my recollection, your Honor, that Defendant's counsel specifically asked for certain comments which were placed in the evidence.

Mr. Gibson: I certainly made no request of that kind, your Honor; I certainly intended not to.

The Court: Mr. Gibson said that he thought that if any part of the instructions were going to the jury, all of them ought to go. I may have misunderstood what he intended,

### *Instructions to the Jury.*

and probably did. But I see no reason in the world why everything that I said to the jury should not go to them.

1326

I already said it to the jury. Theoretically, they are supposed to have it in their minds, to retain it and remember it. If they want it, I can't see that any further harm, if any harm, has been done, could be done, by giving them exactly every word that I said, so there need be no confusion at all.

Mr. Gilmer: I did not know that they requested that. I understood that only the charges, the instructions, themselves, be given.

The Court: Gentlemen, that was part of my charge. You need not take this down, Mr. Reporter.

(Discussion off the record.)

1327

The Court: Back on the record.

Gentlemen, you have before you, I am sure, the proceedings of yesterday, Volume 16, beginning on page 1281, my instructions to the jury, or charge to the jury, running through to about two-thirds of the way down on page 1302, ending with the sentence, "If you have not reached any agreement or verdict by five o'clock or something like that, I will excuse you until morning."

I have embodied all of that in this matter that I am going to send to the jury. At that point, which I have indicated in the record, Mr. Humrickhouse stated they wished to make objections outside of the presence of the jury, and, therefore, all in Volume 16 from that point to the bottom of page 1309 is omitted.

I then resume with this statement: "Counsel called my attention to several matters concerning them in the charge. They called my attention to the fact that I had said"—and so forth. I resume that and include that into the matter to be sent to the jury, down to about two-thirds of the way

### *Instructions to the Jury.*

down page 1311; where I say: "I don't think there is anything else that is necessary to say at this time."

Then what was said to the jury this morning in regard to the fact that they were not concerned with

**1328**

matters of punishment, but solely the tryers of facts, is included. I think you have all of that now. So the result is that everything that I have said to the jury since the conclusion of the argument, so far as I know every word I said to the jury since conclusion of argument, is in this matter that I am going to send them.

Is that clear?

Mr. Humrickhouse: It is to me, sir, and I still make the objection. I am sure that is clear to you.

The Court: I understand it is objectionable to you, but I wanted to be sure that you knew what I was sending up to them. You have copies of all of this.

Mr. Humrickhouse: Yes, we have copies of all of this.

Mr. Lee: I understand the objection is on behalf of all of the defendants.

The Court: In other words, looking at what was given to you, from pages 1281, to and including 1302, is that right?

Mr. Gilmer: It goes to 1311, the part I have, your Honor.

Oh, without a break? Yes.

The Court: It goes to 1302.

Mr. Gilmer: Yes, your Honor.

The Court: And then beginning on 1309, just one

**1329**

sentence up there on 1309, it runs through 1311.

Mr. Gilmer: Yes, your Honor.

The Court: Then you have 1314 through 1316, where I say, "You may now retire." That is what I have and that is what I am sending up there.

Mr. Marshal, will you please send these copies to the jury room?

(Handing documents to Mr. Bowman, Deputy Marshal.)



*Instructions to the Jury.*

And the transcript handed to the Deputy Marshal, from the transcript of the Instructions and the preliminary pages of the Morning Session herein, was as follows:

1330

## INSTRUCTIONS TO THE JURY

The Court: Gentlemen of the jury, we have come to the end of a trial which, frankly, I feel has been unnecessarily long. You no doubt noticed that last week and in the week before at times I have been pretty irritable. I have snapped and snarled at attorneys, and displayed a good deal of irritation and impatience.

It was largely due to the fact that I thought a great deal of testimony was being introduced in the case which was immaterial and confusing, and which did not relate to the real, simple and main issue in the case. I do not excuse either the Government or counsel for the defense from that criticism.

I think we had an unnecessary amount of evidence in this case, considering the relatively simple issue in it, and I would be less than frank if I did not say that I think the arguments today displayed the same evil, if you want to call it that, or the same faults, let us say.

I think they have ranged over a great deal of immaterial matter. I am going to try, if I can, to detail to you what I think, in my opinion, is the simple issue in the case. I want to first of all say that if in the course of anything I say I comment upon the evidence, or seem to indicate any opinion as to the weight of the evidence or the credibility of witnesses or

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anything of that sort—I try to avoid it as far as possible—if I do, I am merely expressing my own opinion, by which you are in no way bound. You are the sole judges of the facts of the case. You are the sole judges of the

*Instructions to the Jury.*

credibility of the witnesses. You are the sole judges of the weight you are going to give to their testimony and you should not be influenced by anything that I say except as it might be helpful to point out to you salient facts in the case.

But expressions of opinion on my part are not in any way binding upon you, and you are perfectly at liberty to ignore them if they do not agree with your own opinions. That is particularly important, I think, in view of the wide spread that the testimony has taken in this case which, as I have already indicated, I consider a large part as being of not great importance.

I want to caution you also on this, that statements by counsel in the course of their arguments are not evidence. It is the tendency of all attorneys representing a cause on one side or another in their zeal and earnestness to see the testimony of witnesses in the light most favorable to them, which is natural.

It is also their tendency and legal right, a perfectly legitimate thing to do, to pick out the parts of the testimony of a witness which appear to be favorable

## 1332

to their client and to ignore entirely that part of the testimony that is unfavorable to their client. That makes it particularly desirable that you should remember all of the evidence in this case. I admit that that will be a rather difficult job in view of the length of the case, but that is your task, that is what you are in the jury box for, to hear the evidence, to listen to it, and to bear it in mind, all of it, whether it is favorable or unfavorable to these defendants.

Counsel for the Government may have emphasized certain phases of the evidence, and counsel for the defendants may have emphasized other phases of the evidence. Do not let yourselves be carried away by either exhortation, and you remember all the evidence in this case as far as you can, and apply it.

## *Instructions to the Jury.*

1333

First of all, I want to say to you, to state to you, the rule that governs all criminal cases when it comes to determining the guilt or innocence of persons charged with a criminal offense. The fact that people have been indicted is no evidence of guilt. Indictment merely represents a charge which has been made and the burden is upon the Government to prove the guilt of the defendant before it has a right to ask that they be convicted.

And they must prove that guilt beyond a reasonable doubt. Reasonable doubt is just exactly what the term "reasonable" itself, means. It does not mean that crime or any criminal action has to be proven to a mathematical certainty or beyond all possibility of mistake, but it also means that people ought not to be convicted on mere suspicion or the possibility that they have committed the offending act.

It is best summed up by saying that after you have considered all of the evidence in the case, apply to it your conscientious judgment and reason. If you can say that there remains in your mind no reasonable question of the guilt of the defendants, then you have been satisfied to the extent that the law requires for a conviction.

If you have not been satisfied to that extent, then the defendants should not be convicted.

1334

In this case, the defendants are charged with having violated those provisions of what is commonly known as the Sherman Act, a Federal law of longstanding, sometimes referred to as the Anti-Trust Law. This action is directed against restraints of trade in interstate and foreign commerce and, insofar as pertinent here, provides that every combination or conspiracy in restraint of trade or commerce among the several states is hereby declared to be illegal, and every person who shall engage in any combination or conspiracy hereby declared to be illegal shall be deemed to be guilty of a misdemeanor.

*Instructions to the Jury.*

The charge with which you are concerned is the fixing of a discount off identical price lists for plain mirrors. Specifically, the charge here is that the defendants, in the latter part of October, 1954, agreed to quote to furniture manufacturers a uniform discount of 78 per cent off the 1950 list.

If you gentlemen of the defense counsel have copies of the instructions I gave you this morning, you will note that in the third line from the bottom there, I made an alteration by saying in the latter part of October, 1954. There had been a misstatement there in which I spoke of the weekend of October 29, 1954. It is not

**1335**

important. The indictment charges that the defendants in violation of the anti-trust laws, have combined and conspired to restrain interstate trade and commerce by an agreement, understanding, and concert of action.

It is charged that the combination and conspiracy consisted of an agreement to stabilize and fix prices for the sale by the defendant corporations of plain plate glass mirrors to furniture manufacturers by agreeing upon and using identical list prices covering over 2,000 sizes of plain plate glass mirrors as a base for the quotation of prices for such mirrors and by agreeing upon uniform discounts to be applied to such identical list prices.

As you gentlemen will recollect, it was conceded here that all of these manufacturers had uniform list prices, which was referred to as the 1950 list, and their method of varying prices was to vary the discount from time to time.

The charge here is that on that 1950 list price, which was identical with all of them, that they agreed then upon a uniform discount. The gist of the offense under the law is in the act of conspiring, that is, in agreeing or joining together or acting together under a common understanding to fix or stabilize prices.

The word "conspiracy," which is ordinarily used in

*Instructions to the Jury.***1336**

the law and is used in the statute, has no particularly technical meaning. It involves nothing of mystery. A conspiracy is an agreement or understanding among two or more persons to do an unlawful act, and it exists wherever there is a combination, agreement or understanding between two or more persons for committing such unlawful act.

The crime is the conspiracy or understanding itself. It is not necessary in the existence of a conspiracy that the persons involved should themselves have called it a conspiracy, and it is not necessary that they should get together and enter into any formal or definite agreement to do things which they intend to do, or that they should all agree formally upon the details of the plans by which the unlawful combination should be made effective.

The offense is sufficiently proved if the jury is satisfied that two or more people acted together in the accomplishment of an unlawful purpose, and that in this unlawful purpose, they acted with mutual or common understanding as to the purpose to be accomplished and cooperated together in the accomplishment of this purpose.

It will be plain to you that a conspiracy may be and in fact often must be shown by circumstances rather than by definite proof of an actual agreement.

**1337**

Persons violating the law do not customarily make their plans known to the outside world and it is usually necessary in considering whether or not a conspiracy exists to consider all the facts and circumstances in the case.

The existence of a conspiracy may be proven directly or by facts and circumstances from which it may be logically inferred that there was, in fact, a common understanding. Its existence may be proven directly or it may be proven by a combination of the circumstances and by the direct evidence.



*Instructions to the Jury.*

The fact that a particular defendant played a lesser or even a minor part in the conspiracy in no way lessens his guilt. In the contemplation of the law he is as guilty as any dominant member of the conspiracy.

If a defendant having knowledge of the conspiracy knowingly participates with the conspirators for the purpose of assisting in the common design, then he becomes a party thereto and is as equally guilty as the originating conspirator.

Of course, a person could not participate in a conspiracy without knowledge of it, without knowledge that he was acting in a common understanding with other people. It is necessary that there should be a common understanding or agreement, which, of course, does not

## 1338

have to be in writing and which does not have to be formal in any way. But the acts complained of have to be the result of a common understanding among the group with knowledge of what they intend to do.

Those who engage in an unlawful combination or conspiracy to fix prices violate the law merely by entering into such an agreement or understanding, and it makes no difference whether or not the objectives of such conspiracy or agreement are carried out in whole or in part.

In order to establish the crime charged here it is only necessary that a conspiracy or agreement or understanding be established. The Government is not required to prove that the defendants or any of them intended to violate the law or intended to restrain interstate commerce.

## 1339

If the jury finds that the defendants, or any two or more of them, agreed to combine to fix or stabilize prices of commodities moved in interstate commerce, their intent in entering into such agreement or combination is immaterial.

*Instructions to the Jury.*

Since all conspiracies to fix or stabilize prices are prohibited by the Sherman Act, it is immaterial whether any particular price-fixing scheme resulted in higher or lower prices, or whether the scheme is wise or unwise. Whether there was a glass shortage or whether there was a price war or whether there existed competitive evils in the mirror manufacturing industry are not defenses to price fixing.

The fact that the motives of the members of the combination might have been to improve conditions in the mirror manufacturing industry is not a defense, and it is not material that the activities of the defendants, if they entered into any such agreement as has been charged, may have been regarded by them as necessary to enable them to conduct their business properly.

The law condemns any agreement by two or more competitors acting together to determine and fix prices. The very gist of the offense, what the statute seeks to prevent, is any agreement to fix prices, and if any such agreement or understanding is entered into, it does not

## 1340

matter what the motives were; it does not matter what the effects or the business were; and it does not make any difference what the defendants did thereafter.

If you find and believe there existed any combination, conspiracy, agreement or understanding to fix prices for plain plate glass mirrors to be sold in interstate commerce to furniture manufacturers, then anyone participating in such combination, conspiracy, understanding or agreement must be found guilty of violating the Sherman Act whether or not such defendant itself engages in interstate commerce.

That has particular bearing on the situation of Mr. Weaver. As Mr. Weaver testified, they did no business in interstate commerce. They could be involved, however, if you believe they were participants to any agreement, because they agreed with other manufacturers who were engaged in interstate commerce, and the effect of their par-

*Instructions to the Jury.*

ticipation would be to fix prices on articles which were the subject of interstate commerce.

The law makes it unlawful for any individual or corporation to engage in such conspiracy. If interstate commerce is affected, it does not matter that a member of the conspiracy is not engaged in interstate trade and commerce, or that activities of such member may be intrastate in character.

## 1341

The antitrust laws apply to every member of a price-fixing group if he is found to have participated in a conspiracy or agreement to fix prices no matter whether his business is large or small, or whether he is in a position to control the market.

I think I have sufficiently explained to you gentlemen the nature of a conspiracy as it applies to the facts in this case. I hope I have done so. I believe I pointed out to you a minute ago, of course, that before any defendant can be found guilty of a conspiracy he must have knowledge that such conspiracy existed, and having such knowledge, he joined or participated in it.

The mere discussion of prices among defendants, or any of them, is not in itself a violation of law, and neither is the gathering of information concerning prices charged or proposed to be charged by a competitor a violation of the law.

The mere fact that defendants had the same announced prices for their mirrors is not in itself a violation of law, nor would the mere fact that the defendants sent out letters at or about the same time announcing identical price quotations constitute in itself a violation of law.

Don't misunderstand what I mean, gentlemen. I mean that those separate acts which I have mentioned, standing alone, do not constitute a conspiracy. None of these

## 1342

acts, taken separately, is a violation of law, but they are all matters which you should consider in determining whether

*Instructions to the Jury.*

or not the actions taken by the defendants in this case were the result of an agreement or understanding among them, and if you find that they were, then the defendants would be guilty of a violation of law.

Considerable evidence has been introduced, and a considerable part of the argument of counsel for the defendants was devoted to the matter of the prices which these defendants were actually shown to have charged their customers, or the amounts that they received from their customers, following the date on which they were charged to have entered into this unlawful agreement.

You may take into consideration the actual prices charged by defendants as disclosed by the evidence in this case. It is supposed to be embodied in that chart over there. In this tabulation which I have, it shows that during the month of November, some of these defendants received larger sums for goods which were sold below the 78-2 discount than for goods that were sold at or about that.

You will remember that the Government's charge is that as a result of this agreement, these defendants here sent out letters fixing the uniform discount of 78 percent off the list price, plus the two percent cash discount

## 1343

which seems to be customary in the trade.

This tabulation indicates that all of them sold some goods below that price, and some of them received a larger part of their income during the month of November from goods sold below the alleged unlawful agreed discount.

I want you to draw very carefully the distinction which I am now going to make to you. That evidence was permitted for the one purpose of showing, or for its bearing, I should say, on the question of whether or not these defendants had actually entered into this understanding or agreement.

The argument of the defendants is that on the showing made here, where they sold goods much below—or rather,

*Instructions to the Jury.*

they sold a large quantity of goods below—the 78-2 discount, shows that they never had any agreement about the 78-2 discount.

It was introduced for that purpose only. Of course, it may show that, and you are entitled to consider that. It may show that none of them lived up to the agreement after they made it, if they made one. It may show that they started undercutting each other right away after they made the agreement, if they made one, or it may show that they had a large number of old and welcomed customers that they did not want to lose, and to whom they felt it

## 1344

was necessary to cut prices below the agreed discount. Or it may show that they became convinced that their whole plan was unwise and should be abandoned.

The distinction I want you to draw is this: While this testimony as to the prices which they charged in November, which was immediately following the date of this alleged agreement, is admissible as bearing on whether or not they did enter into an agreement, it is for that purpose only, and if you believe that the agreement was entered into at Asheville or consummated up there on the parkway, then it does not make any difference what happened afterwards.

Do you draw that distinction? Keep it in mind, because if you would be satisfied to the degree that I have instructed you that an agreement or understanding was entered into as charged in this indictment, then the fact that they did not observe it does not make any difference, because it is the agreement itself which is the thing that the law forbids.

But this evidence should be considered by you in determining whether or not you think they made any such agreement. I want to say this to you, gentlemen: You are the sole judges of the credibility of the witnesses and the weight you want to give to their testimony. I do not think it is improper for me to comment on the fact



*Instructions to the Jury.*

1345

that the defendants in their arguments have made a rather savage attack upon the witness Jonas. Mr. Rogers referred to the intense hostility and bitterness which Mr. Jonas had displayed for Mr. Messer. I am frank to say I did not see anything in Mr. Jonas' testimony that was any worse or as bad as what Mr. Messer's own counsel said about him in the opening statement, when he said he had the reputation of being a price cutter and a double-crosser, and I think it is not improper to say that Mr. Jonas' testimony is in no way denied in any substantial particular.

I am not vouching for his testimony, nor am I a partisan of Mr. Jonas'. But I think the attack on him is something that I can find no justification for in the evidence in this case. You may think differently, and you are perfectly entitled to think differently if you do think so.

His testimony was corroborated by Mr. Stroupe, and I think also you are entitled to consider the fact that if any light could have been thrown on this case, that it is strange that Mr. Hearn was not called here to throw light on it. After all, gentlemen, a trial is a pursuit for the truth, and any witness who can throw light upon it, or who can help to bring out the truth, and who is not produced, is something that you can consider.

1346

Mr. Karp commented on that in his closing argument, and I don't think his comment was in any way improper. On the contrary, I think it was quite pertinent. It is particularly pertinent in view of the fact that these witnesses, all of them, or representatives in some way of the defendants themselves, have testified that Mr. Hearn, in his hotel room in Asheville, undertook in one witness' words, "to act as sort of a missionary, to get the price war started, and that it was Mr. Hearn who arranged the meeting on the Blue Ridge Parkway."

### *Instructions to the Jury.*

He could have told us—I don't know what he would have testified. I am not suggesting for a minute the essence of what he would have testified to, but I think he should have been produced to help this jury ascertain the truth in this case.

Gentlemen, as you know, during the course of this case I dismissed the indictment as to Mr. Gordon, because, as I told you then, I could find nothing to indicate that he was a participant in any agreement or plan to raise prices. He was undoubtedly at Asheville, and people consulted him about various things, and he gave information to Mr. Jonas, I believe he said. The people up there were talking about raising prices, and Mr. Jonas was talking to him about it, but there was nothing to indicate that Mr. Gordon himself was conspiring in any agreement about price fixing.

### **1347**

There remain in the case, as defendants, the seven corporations, I believe: The Pittsburgh Plate Glass Company—and I might say as to them it is charged that their activities emanated from their High Point office, at High Point, North Carolina, from which the letter was sent out.

There is the Galax Mirror Company of Galax, Virginia; the Carolina Mirror Company, North Wilkesboro, North Carolina; Mount Airy Mirror Company of Mount Airy, North Carolina; Stroupe Mirror Company of Thomasville, North Carolina; Virginia Mirror Company of Martinsville, Virginia; and the Weaver Mirror Company, of Rocky Mount, Virginia; and two individual defendants, Edd F. Gardner, the president of Carolina Mirror Company and Mr. J. F. Messer, who is the chairman of the board of directors of both the Mount Airy Mirror Company and the Galax Mirror Company, I believe. He has a controlling interest or controls the business policies of both of those corporations.

That is nine defendants. You might believe that some of them participated in this agreement or understanding.

### *Instructions to the Jury.*

conspiracy as it is named, and you might believe that others did not. You are at perfect freedom to find all of them guilty or all of them not guilty, or you can find some of them guilty, if you believe

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they were, and you can find some of them not guilty, if you believe they had no part in it.

I think that is about all that is necessary for me to say to you, unless counsel can suggest something that I may have overlooked.

Mr. Humrickhouse: Your Honor has not stated anything about the presumption of innocence.

The Court: I think I did.

Mr. Humrickhouse: I did not hear it, then.

The Court: I think I started off by telling the jury that the indictment was no evidence of guilt at all.

Mr. Humrickhouse: You said that, sir.

The Court: It is merely a charge. Every defendant in every criminal case is presumed to be innocent until his guilt is proved. The burden is upon the Government to prove it to a reasonable doubt in accordance with the principles which I did state to you.

If there are no further suggestions—

Mr. Gilmer: You meant beyond a reasonable doubt, I take it. You said to a reasonable doubt, but you meant beyond a reasonable doubt.

The Court: They have to prove the guilt to the point where you can say you have no reasonable question about their guilt. If you do have a reasonable question

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about the guilt, or of all of them or any one of them, then you should find them not guilty.

The evidence on these defendants is somewhat different. I did not want to start commenting on the evidence, but I think it would be, in fairness to say that on the Pittsburgh

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*Instructions to the Jury.*

Plate Glass Company, it largely revolves around the sending out of that letter establishing the 78-2 discount.

The same is true as to Mr. Weaver or of the Weaver Mirror Company. Mr. Weaver himself has said it was a pure coincidence that he happened to send it out. If you believe that that letter that Mr. Weaver sent out, dated October 29th, in which he fixed the 78-2 discount, if you believe that the sending of the letter on that particular date and fixing the same discount as everybody else was a pure coincidence, that he knew nothing about an agreement on the part of the others, he would not be guilty.

He would not be guilty unless he did these things or participated in these things with some understanding that he was acting in conjunction with the others. The same would be true of the Pittsburgh Plate Glass Company. But these corporations can be found guilty, gentlemen, without any proof as to who was the author, what individual was the author of the letter.

1350

If that were not true a corporation could enter into agreements of this sort and simply send out a letter signed, "The Pittsburgh Plate Glass," or signed "Galax Mirror Company," or "Mount Airy Mirror Company," without any indication of who dictated the letter or who authorized its being sent out.

So there is no necessity of proof as to who authorized the letter as an individual. That is, as to what member of the concern was the author of the letter or who was responsible for sending it out. If it went out over the name of that company, that company is responsible.

Do you gentlemen want to take this case under consideration this afternoon, or would you rather wait until the morning?

Well, I will tell you what I will do. I will let you go to your jury room. The first duty that you will have will be to elect a foreman from out of your own number, and his

### *Instructions to the Jury.*

duty will be to preside over the deliberations of the jury, to give everyone a chance to express his views and have him courteously listened to without interruption or interference, and conduct the whole deliberations of the jury in an orderly manner.

Also, it will be his duty, of course, to take the vote of the jurors on the question of guilt or innocence, and to sign any verdict that the jury might reach. There

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have been a great many exhibits introduced in this case. You do not have to take those exhibits to the jury room unless you want them. I certainly would suggest that you did not bundle up that great mass of exhibits and take them up there; but there may be particular ones that in the course of your deliberations you would feel desirable to have and to examine and in that case you can send for them.

I am not going to urge you to take the whole bundle up with you at once unless you want to. I suggest, gentlemen, that you retire to the jury room and elect your foreman and get organized. Maybe you might have some preliminary discussion. If you have not reached any agreement or verdict by five o'clock, or something like that, I will excuse you until morning.

1352

The Court: Counsel have called my attention to several matters concerning them in the charge. They called my attention to the fact that I had said that Mr. Jonas' testimony was uncontradicted in all material matters and all important matters. There was one contradiction that I remember now, which was called to my attention, and I don't know whether there were any others or not. There was testimony about him calling up to Pittsburgh in an effort to talk to Mr. Gordon. He was unable to get Mr. Gordon. He talked to Mr. Prichard, who testified here. Mr. Prichard denied that Mr. Jonas had given any message to him for Mr. Gordon, as Mr. Jonas, I believe, testified that he had. So there was that contradiction.



300

*Instructions to the Jury.*

I considered it, I had that in mind, but I considered it immaterial inasmuch as I had dismissed Mr. Gordon from the case. I didn't think attempts of Mr. Jonas to communicate with him were of importance. But that fact was brought out, of this contradiction in the testimony.

Of course, that doesn't affect Mr. Gordon, who has been dismissed from the case. It may, however,—No, I don't think it would, either.

Another thing I want to correct, if I gave you a false impression, was I said that the charge here was against the Pittsburgh Plate Glass Company's High

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Point warehouse. I intended to say that the letter which went out, emanated, from the Pittsburgh Plate Glass warehouse. Of course, if it went out, and if it was a part of an agreement, it was directed to be sent out by somebody in authority of the Pittsburgh Plate Glass Company. But I did tell you that a corporation could be found guilty without any proof as to what particular official or person in authority at that company was the individual who made the agreement or understanding, if one was made.

So the indictment here is not against the warehouse branch at High Point. It is against the Pittsburgh Plate Glass Company. If you believe that they were a party to this understanding or agreement in any way, of course, they would be in the same situation as any other corporation, providing, of course, you believe any agreement or understanding was ever reached.

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And thereupon, the following Proceedings were had:

The Court: Is there anything that counsel wish to bring to the attention of the Court?

Gentlemen of the jury, on yesterday I completed my instructions to you, but there was one thing I omitted to say,

### *Instructions to the Jury.*

which I felt was unnecessary, and which I expect is unnecessary. That is, in a Federal Court, juries are in no way concerned with questions of punishment.

Some of you may have served on state juries, and you know that in state courts, juries not only determine the questions of guilt or innocence, but if they find a defendant guilty, they ordinarily determine the punishment. The practice is different in Federal Courts.

The duties of the jury and Judge are distinctly drawn. The juries are the tryers of the facts, and they report to the Court on the fact of whether or not the defendants are guilty or not guilty, and the disposition of the defendants after that is a matter for the Court to decide entirely.

I wanted to make that clear to you, in case there was confusion in the minds of any of you.

I know of no reason why you should not retire, but first I will have to ask Mr. Brown and Mr. Garland, the two alternate jurors, to stand aside. You gentlemen were selected as alternates because it was thought that

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the trial would be long continued and someone might get ill, or for some reason or other would be unable to continue. We have been very fortunate in that.

In this winter season, with variable weather, and the presence of influenza, and the usual winter disabilities that come along, the severe colds and things of that sort, have not occurred. We are very glad that no one has been ill who has had to retire from the jury, but the statute provides that the alternate jurors hear the case along with the regular jurors, up until the time that the regular jurors are instructed and then they are retired.

Mr. Brown and Mr. Garland, the two alternate jurors, may stand aside.

Now, gentlemen, I will ask you to go up and begin your deliberations. I think you should have with you the indictment, because it states the offense, and also because it gives

*Instructions to the Jury.*

you the names of the persons against whom the charges have been brought and who are on trial.

I will repeat to you again I certainly would not urge you to take the whole mass of exhibits unless you feel a need for them. If you want to take them, you are perfectly at liberty to do so, or you are at liberty to call for any particular exhibits you may want after you have gone to the jury room.

**1356**

Your discussions may indicate the need of them. My instructions were somewhat lengthy. If at any time you should be in confusion or if there is a difference of opinion as to what I intended by anything I said, you are at liberty to come in and ask for further instructions or for clarification of what I have said.

I trust you will not have to do so. I hope I made myself clear enough. It is always possible I did not.

I have here in substance, well, practically in its entirety, the written instructions. I gave them to you verbally. There were some comments I made, particularly toward the end, which have not been typed off, so these are not complete. But if you get into any difference of opinion as to what I said or what the applicable law is, you may call for further clarification.

Now you may retire.

And thereupon, the jury retired to their jury room to consider their verdict.

Thereupon, a recess was taken at 10:55 o'clock a.m., pending the action of the jury.

J11

*Instructions to the Jury.*

1357

At 12:35 o'clock p.m. the jury returned to the courtroom for further instructions and the following proceedings were had:

The Court: The Marshal indicated that you desired to have clarification of some further instruction, or there was some question you wanted to ask.

First of all, I want to say, gentlemen, be very careful not to give any indication of any division among your number, that is, as to how certain members or so many of them may stand one way or the other.

Was there something further you wanted to understand, Mr. Copenhaver, which has arisen?

Foreman Copenhaver: There is some question on the wording of the indictment and in the instructions. If I might, I would like to read.

The Court: All right.

Foreman Copenhaver: "Beginning in or about October 1954, or prior thereto, the exact date being to the grand jurors unknown, and continuing thereafter, the defendants, the co-conspirators and others to the grand jurors unknown, have been engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in plain plate glass mirrors, in violation of Section 1 of the Act of Congress of July 2, 1890, . . ."

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I would like to skip a little.

"The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, co-conspirators, and others to the grand jurors unknown, the substantial term of which has been that they agree to stabilize and fix prices for the sale by defendant corporations and co-conspirator mirror manufacturers of plain plate glass mirrors to furniture manufacturers by the following means . . ."

*Instructions to the Jury.*

What some of the jurors would like to know is if that agreement has to be a continuing agreement.

The Court: No, sir; it does not.

Foreman Copenhaver: If the agreement has just been made and has not been followed, would this charge of guilt be true?

The Court: The offense would have been committed if there had been any agreement such as alleged in the indictment, if it had been made, even though it were abandoned the next day. There does not have to be any continuing of it.

Foreman Copenhaver: And it does not have to be a formal agreement as long as there is an understanding among the defendants?

The Court: As long as there is any understanding

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among them as to a common purpose to be accomplished.

I might illustrate it this way, if I may. Suppose the police were to find three men attempting to rob a bank or attempting to tamper with an automobile. You would not have to prove that they had agreed to do it because you would know by the very fact that they were there together that they had an understanding as to what they were to do.

There does not have to be any formality about it. It is just that there must be an understanding among them to act together for a common purpose. Of course, they must have known of this common purpose. A man who knew nothing about it, who was apparently involved in it but knew nothing about it, and had no understanding or agreement with the others, would not be guilty.

But the very substance of the conspiracy, as it is called, is an agreement or understanding to act together to carry out a common purpose. There does not have to be any particular formality about it at all. Of course, everybody that might be charged with it has to have knowledge of it and knowledge of the purpose they were to accomplish.

Does that clarify your questions, gentlemen?



*Instructions to the Jury.*

All right. I suggest that you take your recess at this time until two o'clock. Come back in the courtroom

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at two o'clock.

And thereupon, the jury retired from the courtroom.

The Court: I presume you gentlemen may want to enter an exception to my statement that there need not be any showing of a continuing conspiracy.

Mr. Rogers: Yes, sir.

Mr. Gilmer: Yes, sir.

The Court: You do except?

Mr. Humrickhouse: We do, because we believe it amends the indictment, as we previously stated.

The Court: Very well. We will recess until two o'clock.

Whereupon, at 12:42 p.m. an adjournment was taken until 2:00 o'clock p.m.

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Pursuant to adjournment, the afternoon session, on December 3, 1957, continued as follows:

All parties are present, and the jury in the box.

The Court: Mr. Gentry, will you please poll the jury, to be sure they are all here?

Mr. Copenhaver, is everyone on the jury present?

Foreman Copenhaver: Yes, sir. They are all here.

The Clerk polls the jury.

The Court: You may get the instructions for the jury, Mr. Marshal.

Is there anything anyone wants to ask before you go back?

Juror Roy Littrell: Your Honor, under the offense charged, it says in part that:

"By agreeing upon and using identical list prices covering a range of over two thousand sizes of plain plate glass

*Instructions to the Jury.*

mirrors as a base for the quotation of prices for such mirrors; and

“(b) By agreeing upon and applying in pricing plain plate glass mirrors a uniform discount from said list prices, the amount of which discount, from time to time, has been changed by agreement among the defendants and the co-conspirator mirror manufacturers.

“13. During the period of time covered by this indictment and for the purpose of effectuating and

**1362**

carrying out the aforesaid combination and conspiracy, the defendants by agreement, understanding and concert of action have done the things which are hereinabove charged they conspired and agreed to do.”

I am not clear, your Honor, what is meant there by the statement “effectuating and carrying out.” As I understand from your instructions, you said that what they did after this has no bearing on it, but that, to me, conflicts with the indictment.

**1363**

The Court: If the defendants entered into an agreement or common understanding either to raise or to stabilize prices, to fix prices among themselves, it would not make any difference whether they abandoned it after that or not, or for any other reason, or, as I said yesterday, if they had old and valued customers that they felt they had to make concessions to and if thereby, they did not maintain this agreed discount rate or for any other reason they did not carry out the objectives of the agreement or of the conspiracy.

It is the entering into the agreement that constitutes the offense, if it is proven and whether they carried it out in the future, whether they realized their objective of stabilizing prices in the industry over a continuing period does not make any difference.

*Instructions to the Jury.*

Juror Roy Littrell: As I see it, your ruling there is in conflict with the indictment because the indictment specifically says "carrying out."

1364

The Court: The indictment also says "a continuing conspiracy." I noted this morning that it did not have to continue. In my interpretation of the law, from the decided cases, it does not have to be. Where were you talking about?

Juror Roy Littrell: On the next to the last page, your Honor.

The Court: The charge is that they agreed upon and used "identical list prices covering a range of over two thousand sizes of plain plate glass mirrors as a base for the quotation of prices for such mirrors."

That is the basic price list in the little books that have been referred to.

"By agreeing upon and applying in pricing plain plate glass mirrors a uniform discount from said list prices, the amount of which discount, from time to time, has been changed by agreement among the defendants and the co-conspirator mirror manufacturers."

Now, "during the period of time covered by this indictment and for the purpose of effectuating and carrying out the aforesaid combination and conspiracy, the defendants by agreement, understanding and concert of action have done the things which are hereinabove charged they conspired and agreed to do."

Is that what you are referring to?

1365

Juror Roy Littrell: It goes on further, I think, there, by saying—

The Court: Let's see.

"The effects of the combination and conspiracy hereinabove charged, among other things, have been:

*Instructions to the Jury.*

“(a) To suppress price competition in the sale and distribution interstate commerce of plain plate glass mirrors to furniture manufacturers; and

“(b) To deprive furniture manufacturers of free and open competition in the purchase of plain plate glass mirrors.”

That seems to be the end of this, except:

“The combination and conspiracy herein charged has been carried out in part within the Western District of Virginia and within the jurisdiction of this Court. During the period of time covered by this indictment and within the past five years, the defendants have performed within the Western District of Virginia some of the acts in furtherance of the combination and conspiracy charged in this indictment.”

That is the entire matter.

1366

Juror Roy Littrell: The paragraph that I have reference to there in the indictment refers to agreeing and carrying out. As I understand your instructions, the carrying out of the prices does not have any bearing on this case.

The Court: If they entered into an agreement. You first have to find that they had an understanding or agreement to raise prices or fix prices among themselves, to agree upon a uniform discount.

If they did that, then it does not matter whether they carried it out or not. They may have abandoned it all the next day, as I said. They may have realized that they had done something that probably was unwise and decided not to carry it out. They may have had their tongue in their cheek when they agreed and started undercutting each other the next day.

Juror Roy Littrell: As I read the indictment, it does not specifically separate them.

The Court: You read my instructions?

Juror Roy Littrell: We have.

*Instructions to the Jury.*

The Court: All right, sir. The indictment, of course, charges in quite a good deal of complicated language. But I instruct you that as a matter of law it does not matter whether they carried out the objectives of the agreement or not or whether they continued or not,

1367

if you believe that they entered into such an agreement.

(And thereupon, the Jury retired to the jury room to further consider their verdict)

Mr. Holton: Could we, on behalf of the Stroupe Mirror Company ask this, in view of the colloquy which has just transpired?

Your Honor, in response to this inquiry, emphasized that what happened afterwards makes no difference if there were an agreement. In view of that emphasis, don't you think it would be appropriate to tell the jury again, in order that one portion of that instruction would not be unduly emphasized, that what happened afterwards may be considered by the jury in determining whether there was an agreement?

The Court: I told them that yesterday and in everything I said today, I preceded it by saying, "if you first determine that there was an agreement." I had to emphasize the aftermath because that is what the juror was talking about. That is what he was inquiring about.

Mr. Holton: Yes, sir, and I concede, and I am pleased that your Honor underlined the words "if there were an agreement." But it does seem to me, I felt it, I was very conscious of it, myself, I am afraid the jury may have been—that the emphasis was only on a portion

1368

of that instruction at a time while the jury is giving consideration to it and it seemed to me it would be fairer to



*Verdict.*

these defendants if your Honor would eliminate that emphasis at this time by telling them the whole instruction.

The Court: I could not help emphasis on it in the very question that the juror asked.

Mr. Holton: Yes, sir, but I hope the juror did not get the idea that he can't—

The Court: I am not going to repeat the lengthy instructions that I gave yesterday.

Mr. Holton: No, sir, I don't want you to do that. But I wish you would give the other part of that one sentence you gave yesterday and say that while it may not be considered for one purpose, it may be considered for the other.

The Court: Are you making a motion to that effect?

Mr. Holton: Yes, sir.

The Court: It is denied.

Mr. Holton: Thank you, sir.

And thereupon, a recess was taken pending the action of the Jury.

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At 2:35 o'clock p.m. the jury returned to the courtroom and the following proceedings were had:

The Court: Gentlemen, have you agreed upon a verdict or do you want further instructions?

Foreman Charles K. Copenhaver: No, sir, your Honor. We have reached a verdict.

We the jury find the defendants guilty as charged.

The Court: Does that apply to all of the defendants?

Foreman Charles K. Copenhaver: Yes, sir.

The Court: Is that the verdict of all of you gentlemen? You are agreed on that, are you? All right.

Now, gentlemen—is that signed by you as Foreman, Mr. Copenhaver?

Foreman Charles K. Copenhaver: Yes, sir.

The Court: How does the verdict read, Mr. Gentry?

Mr. Gentry: "We, the jury, find the defendants guilty as charged."

The Court: How is it signed?

*Motions.*

Mr. Gentry: It is signed "Charles K. Copenhagen, Foreman."

The Court: That is what I wanted to know.

Gentlemen of the jury, this has been a long, tiresome case, and you have paid close attention to the testimony. Ordinarily this term, which begins in November, is carried over until January, but you have had a long

1370

siege of it this time, and a good many inconveniences which you have borne cheerfully, and I am going to discharge you from the term. When I have to come back here in January for the civil term of court, I think I will call a new jury.

It would be a good deal of imposition on you. I feel most of you have been here since the 12th of November, anyhow, have you not?

Well, I want to thank you very much for your services. You have heard me explain, I believe, the mechanics by which you receive your compensation and that is to go to the Clerk's office and show your attendance in the court and the mileage you have traveled. Then the Marshal, whose offices are in the main corridor of the building, will give you a check for your compensation.

I am very grateful and glad that all of you were able to get through this prolonged trial without any illness, in view of the prevalence of the flu and everything else around here. I hope you get safely to your homes. Again, I want to thank you for your services to the Court. You are excused.

The following proceedings were had after the jury had retired from the courtroom:

The Court: Do you gentlemen wish to say anything?

Mr. Humrickhouse: On behalf of Pittsburgh Plate

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Glass Company, we would like to move to set the verdict aside and have Your Honor enter a judgment of acquittal

*Motions.*

on the grounds previously stated, and on the further grounds of the improper charge of the Court and remarks of the Court in charging the jury, and upon the obvious ground that there was a fatal variance between the charge upon which the jury returned the verdict and the charge in the indictment from the questions of the jury and the immediate return of the verdict after Your Honor's charge in that regard.

Further, we would like to move under, I think it is, Rule 34, for an arrested judgment, which merely saves our point, that the indictment fails to charge an offense, and that the Court was without jurisdiction, for the same reasons that we made at the time of the motion to dismiss.

We will be glad to pursue those matters with argument further, at a later time, if Your Honor wishes.

The Court: No, I do not think it is necessary to argue further at this time.

Mr. Lee: May it please Your Honor, Weaver Mirror would like to make the same motion as Pittsburgh Plate Glass.

Mr. Morison: On behalf of Galax and Mount Airy and Messer, the same motion is made. I presume that under

1372

the procedure, the motions made apply to all.

Mr. Gilmer: That is my understanding, the same on behalf of Mr. Gardner, that it applies to all, the same motion.

Mr. Humrickhouse: If Your Honor please, I would like to enlarge on the ground about the charge of the Court. I think it was plain error for the Court to permit the Court's charge to be taken in, wherein the Court commented upon the evidence, because it was the same as sending in argument of the Court on the evidence and not permitting the argument of either Government counsel or the defense counsel to be carried in.

*Sentence.*

The Court: I think I stated this morning if there was any fault in the comments of the Court upon the testimony of the witnesses, the fault was in the making of the comment and not sending the full content of the Court's remarks to the jury.

All of your motions are overruled, gentlemen.

Is there anything you want to say on the question of punishment?

Mr. Karp: Your Honor, the Government asks that each defendant be punished the maximum amount contained in the Act. This has been a willful conspiracy, and as stated by the defendants themselves—that is, by officers of the defendants—on the stand, and as

## 1373

indicated by them, they knew what they were doing, they knew they were fixing prices, they knew that, as Grady Stroupe said, that it would appear like it.

They were aware of their appearances, they were aware of their motives.

We ask that each corporation be fined the sum of \$5000, being the maximum amount of the statute prior to amendment on July 7, 1955, and that the individual be punished by a penalty of one year in prison, as provided by the statute. The officers knew what they were doing and what they did to the corporation.

They knew that they were stabilizing prices. They knew they were conspiring, each with each other. They knew it was a violation of law. There had been a previous action against Pittsburgh Plate Glass Company. There was a judgment, a civil judgment, in which they were enjoined from violating the antitrust laws, they knew they were violating the antitrust laws, and the mirror manufacturers are well aware of the law and the importance of the laws.

I think the officers, the presidents, the chairmen of these corporations, who have been found guilty, should receive

*Colloquy.*

the maximum punishment under the law. This law must be enforced. It is important to enforce it. It is a very important law. It is a law upon which our economic

1374

system must rest. They know it: I urge, Your Honor, maximum penalties against individuals and against the corporations.

The Court: Have you gentlemen anything to say?

Mr. Gilmer: If Your Honor please, it is difficult to know how to really reply to such a drastic recommendation on the part of Mr. Karp. To be perfectly frank, I am surprised. I feel that Your Honor has not concluded from the evidence in this case that it is the type of a violation that the public has really been harmed by, or that the furniture manufacturers were harmed by.

I think, as Your Honor has pointed out to the jury, that since the jury has found us guilty of entering into an agreement, it was a technical violation at the best, because the evidence shows, I think, and I believe Your Honor would conclude from the evidence, that it has been an open, competitive market.

After all, that is what the Act, as I understand it, is designed to protect—competition. The evidence shows that it is so competitive in this part of the United States that they can sell even on the West Coast competitively, and in other parts of the United States.

So I hope that Your Honor does not share the Government's view that this violation is of any such magnitude

1375

as Mr. Karp is talking about.

As to our individual defendant, anything that may have been done, I submit, Your Honor, was done in a corporate capacity as a corporate officer. I feel that your Honor



*Colloquy.*

would be meeting the ends of justice in this case if the individual were not fined or punished at all, other than by probation, in view of the verdict of guilty by the jury, and the fact that for some unknown reason to us he was picked out to be included in this indictment.

That is a matter, of course, that we cannot go into or back of. But I can only assume that the only reason was that he happened to be the president of one of the larger companies. So I ask Your Honor to please consider those matters in fixing your punishment.

Mr. Rogers: If Your Honor please, on behalf of Mr. Messer, and the Galax Mirror Company and Mount Airy Company, I accept the verdict. The jury has found that the defendants were guilty, and for this purpose, that settles it. I do want to say to Your Honor, though, that I cannot imagine more extenuating circumstances.

## 1376

Here, these people had all been losing money during the period when the furniture industry was in a period of depression. They had been fighting for such little business as was available. The mirror industry in this area has historically and traditionally been not only highly competitive but cut-throat competitive.

Here were these men who had been losing money and they saw the picture changing. They saw the whole balance of supply and demand being reversed; that whereas, the mirrors had been plentiful and the demand low, now that situation was being reversed, where the demand was going to be great and the supply low.

That was an opportunity to get the prices back up to a point where they could live and not be forced into bankruptcy. I cannot imagine more extenuating circumstances than those.

I also want to say to Your Honor that in an industry where the competition is so great as this, the law of supply

*Colloquy.*

and demand would have brought those prices up, irrespective of any concerted action. It might have come a little sooner as a result of a concerted action, but ultimately and very soon, the law of supply and demand would have brought it up.

I do hope that under those circumstances, Your Honor, will feel disposed as to these two corporate

1377

defendants to recognize the situation, the extenuating circumstances.

As to Mr. Messer, I hope very much Your Honor will take into consideration his health and his age and his other circumstances.

The Court: Does anyone else wish to make a statement?

Mr. Joyce: We would like to say in behalf of Virginia Mirror Company, that the things mentioned by Mr. Gilmer insofar as the price war and the unhappy situation in which these defendants found themselves at the time of the meeting in Asheville was something that had certainly harmed nobody and, if anything, the public who bought mirrors had enjoyed a great deal of benefit from it.

Certainly, the defendants found themselves in a situation that apparently needed some action in some way or another. They could not have gone on, according to the undisputed testimony here. They were losing money and were in a very unhappy position.

The situation presented to counsel was one difficult to analyze. It was not just a simple matter that you could decide. As Your Honor knows, we raised the point quite some time ago about the fact that the defendants were facing an unknown quantity so far as the amendment,

1378

of the statute was concerned.

The question of a plea was a very realistic thing that counsel had to face there. There was no way that counsel

*Colloquy.*

could determine what part of that statute we were operating under. That was a matter that I think gave the Court some concern.

I think you will remember that with Mr. Strickler we discussed it with the Court in Danville. It created a most unusual situation there of knowing just what law did apply.

The situation brought about, as you will remember, an attempt to enter a nolo contendere plea, which could not be worked out. The Government opposed every move that counsel for the defense made in this matter.

There were many questions—

The Court: Mr. Joyce, the refusal of the Court to accept the nolo plea was not because of the insistence of the Government counsel. As you will recall at the time I said I had very definite ideas as to when such a plea was acceptable and when it was not.

I was not sufficiently familiar with what the facts of the case were to know whether it was or was not the proper time. If the facts were developed in which there was a plain case of guilt, of which the defendants were conscious, I did not think a nolo contendere plea

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would be acceptable.

Mr. Joyce: Yes, sir, and I know that you made that very clear to us. But I say there were certain matters we could not determine in approaching these matters. The facts of the case as we see it, are not such as would give a logical reason to impose maximum punishment.

Regardless of what the punishment is now, the Court has, we think, properly held that we were operating under the statute in effect on October 29, 1954. That statute was made for flagrant cases, the worst type of cases. Clearly, we submit that the facts of this case do not show flagrant intention to violate the law.

*Colloquy.*

For that reason, we feel we are not unreasonable when we ask the Court to deal leniently with the defendants in this case, and not treat it as a maximum case merely because the Congress has, since that time, amended the Act to enlarge the maximum punishment.

We think, again, in the case of Virginia Mirror Company—and we are not attempting here to pull ourselves out and show we are different other than as the facts justify—that Virginia Mirror Company has offered evidence that a letter of withdrawal from prices was entered.

Witnesses testified that Virginia Mirror Company

1380

did not operate after that letter or at any time thereafter or thereafter, in agreement with any other manufacturer.

For that reason, we submit that this is not a case, when you review the facts, that would justify or call for the imposition of harsh or severe punishment or punishment along the maximum provided by statute.

1381

The Court: There are some aspects in this matter that make the Court feel a complete lack of sympathy, in that we have gone through a tedious trial here in the face of plain guilt, and which they knew. They all knew that they had been guilty of this agreement or understanding. Had they come in and said, "We realize that we entered into something here which is a violation of the law, and we regretted it, regretted to harm anybody by it," they would have been entitled to considerably more sympathy.

At the same time, there are some things to be said in their favor. It is doubtful if they did hurt anybody very much. I will say to you gentlemen I was compelled to excuse two men from the jury who came to my office prior to the selection of a jury and told me that they were preju-



*Colloquy.*

diced and they did not think they ought to sit. One of them was a furniture dealer who said that the furniture people had known about this agreement and combination and had discussed it among themselves rather recently.

I asked if they heard about it after the indictment was returned, and he said, "No, we knew about it before." So it must have had some effect on the furniture dealers. I do not know. But as far as I can see, there was no serious harm done by this agreement.

## 1382

Some way or other I feel that the Pittsburgh Plate Glass Company and the Messer interests have been the ringleaders in this business. It is quite evident that Mr. Messer was. I feel they deserve probably the more stern treatment than others.

At the same time, there is some consideration to be offered to them. As I read these exhibits that you put in here, Mr. Messer and his interests came closer to living up to this agreement than the others. If there was any double-crossing or running out on it, it was the other people that did it rather than Mr. Messer. He has been accused of being a price cutter and everything of the sort, but having entered into the agreement, he at least did come closer to living up to it than anybody else, judging by those figures you gave me.

I do not think the maximum fines ought to be imposed, but it must be pretty close to it. And I do not think that these individual defendants should be sent to prison. I have never had any intention of sending them to prison at any time, even during the course of the case. I knew, if they were convicted.

That is because I don't think it is a serious enough case for that. I understand that these people were in bad shape, and it is a natural thing that they should



*Colloquy.*

1383

have gotten to talking prices up there, and talking about raising prices, and seeing whether everybody would go along, and getting in contact with the different members, the persons who have been indicted here, to see whether they would go along. It was not unnatural, perhaps, that they should have agreed to it, to a certain extent unthinkingly, perhaps, but nevertheless, that constituted a violation of the law.

I think I will fine the Pittsburgh Plate Glass Company \$4000 and the Galax Mirror Company and the Mount Airy Mirror Company each the same.

Mr. Rogers: Do you mean a total of \$8000 against those two companies?

The Court: Yes, sir.

Carolina Mirror Company, Stroupe Mirror Company and the Virginia Mirror Company, \$3500 each. The Weaver Mirror Company, that is a very small concern, and I do not think a fine against them ought to be over \$1000. Certainly their part in this thing could not have been very sinister if it had been carried out, because they were not big enough to make it so.

The two individual defendants I am going to fine \$2500 apiece, Mr. Gardner and Mr. Messer. Those fines are substantial, gentlemen. They are not the maximum, as you know, but I consider them substantial for this

1384

case. There are certainly some reasons why these defendants should forfeit to the Court instead of defending a case which could have been obviated simply by pleas of guilty where they knew they were guilty.

It does not tend to a lenient feeling to have to fight through a case inevitably, which they must have known or

*Colloquy.*

expected, at least. But the combination is a small one. This is nothing like a combination of big oil companies, or some people who have been prosecuted under the antitrust laws. But the fines ought to be substantial enough to make some impression. They may have a reasonable time within which to pay them.

Mr. Gilmer: That is what I was going to ask, Your Honor, if they can arrange that by sending the money back to the Clerk within a certain time.

The Court: Yes, sir. Three months or even six months, if you want it. The fines having been imposed, I am not concerned that they be paid before you leave the court house or anything like that. You may have a reasonable time.

Mr. Gilmer: As far as we are concerned, we will arrange that with the Clerk within a reasonable period.

The Court: Well, we will say within sixty days.

Mr. Gilmer: All right, sir.

Mr. Rogers: I hope Your Honor will permit me to

1385

remind you that the Mount Airy Mirror Company is a very small operation. It and the Galax Mirror Company are practically one and the same. \$4000 each——

The Court: I believe you are right.

Mr. Rogers: It is one and the same.

The Court: I remember now in that list of sales, the Mount Airy Company sales were very small.

Mr. Rogers: They are all consolidated. It is the same thing. With Mr. Messer at \$2500, I think that makes it unduly hard on us.

Mr. Karp: Your Honor, I might say that the Messer Industries are larger than might appear. They have other industries, known as the Messer Industries, furniture manufacturing and these other things. They were involved in

*Colloquy.*

there and they conspired, knowing they conspired. This is a most untoward conspiracy.

The Court: The Messer Industries as a whole, as I say, were among the ringleaders in this. I will reduce the fine on the Mount Airy Mirror Company to \$2500. I do not think it should go any lower than that.

Mr. Rogers: Thank you, sir.

Mr. Gentry: Your Honor, how about Virginia Mirror?

The Court: Virginia Mirror Company, \$3500, the Stroupe Mirror Company the same, and the Carolina Mirror Company the same. The two individual defendants, Mr.

## 1386

Gardner and Mr. Messer, \$2500 each, Weaver Mirror Company, \$1000, and Galax, \$4000, and Pittsburgh, \$4000.

Gentlemen, I do not know what your intentions are about appealing, but as far as the individual defendants are concerned I will admit them to bail on their own recognizance if you want that.

Mr. Rogers: Thank you.

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**Government's Exhibit 8.**

**Carolina Announcement of 78% Discount Off 1950 List  
Effective October 29, 1954.**

**CAROLINA MIRROR CORPORATION**

**EDD F. GARDNER**  
*President and Manager*

**NORTH WILKESBORO, N. C.**

**October 29, 1954**

**(a) Furniture Manufacturers**

**TO THE TRADE:**

We are withdrawing prices on Polished Plate Glass Mirrors, effective today.

You will find attached new prices which go in to effect as of today. We trust that this price list is self-explanatory.

**Yours very truly,**

**CAROLINA MIRROR CORPORATION**

**EFG:L**

**By**

**R 15 23**

**109 7**

*Government's Exhibit 8:*

CAROLINA MIRROR CORPORATION

*Manufacturers of Mirrors*

EDD F. GARDNER  
PRESIDENT AND MANAGER

NORTH WILKESBORO, N. C.

October 29, 1954

**PRICE SCHEDULE ON  $\frac{1}{4}$ " MIRROR GLAZING  
QUALITY POLISHED PLATE GLASS MIRRORS:**

Plain edge Mirrors

78% discount from April 1, 1950  
Mirror List.

Polished edges

$\frac{1}{2}\epsilon$  per lineal inch for actual  
number of inches polished.

$\frac{1}{2}$ " bevel and polished edge on  
squares, rectangles and circles  
that can be started and finished  
on automatic beveling machines

1 $\epsilon$  per lineal inch for actual num-  
ber of inches beveled.

$\frac{3}{4}$ " bevel and polished edge on  
squares, rectangles and circles  
that can be started and finished  
on automatic beveling machines

1 $\frac{1}{2}\epsilon$  per lineal inch for actual  
number of inches beveled.

1" bevel and polished edge on  
squares, rectangles and circles,  
when started and finished on  
automatic beveling machines

2 $\epsilon$  per lineal inch for actual num-  
ber of inches beveled.

HAND BEVELING:

$\frac{1}{2}$ " bevel and polished edge

1 $\frac{1}{2}\epsilon$  per lineal inch for actual  
number of inches beveled.

$\frac{3}{4}$ " bevel and polished edge

2 $\epsilon$  per lineal inch for actual num-  
ber of inches beveled.

1" bevel and polished edge

2 $\frac{1}{2}\epsilon$  per lineal inch for actual  
number of inches beveled.

Holes drilled— $\frac{3}{16}$ " or  $\frac{1}{4}$ "

10 $\epsilon$  each.



**Government's Exhibit 13.**

**Carolina Mirror Announcement of 77% Discount Off 1950  
List Effective June 13, 1955.**

**CAROLINA MIRROR CORPORATION**

*Manufacturers of Mirrors*

**EDD F. GARDNER**

*President and Manager*

**NORTH WILKESBORO, N. C.**

**June 13, 1955**

**(a) Furniture Manufacturers**

**To The Trade:**

We are withdrawing prices on polished plate glass mirrors, effective today.

The new discount on plate glass mirrors is 77 percent off the mirror list of April 1, 1950. Charges for all extra work such as beveling and polishing edges remain the same.

**CAROLINA MIRROR CORPORATION**

s/ **E. F. GARDNER**

**E. F. Gardner**

**109 9**

**R 15 25**

## **Government's Exhibit 14.**

### **Undated List of 67 Plain Mirror Customers of Carolina Mirror.**

**CAROLINA MIRROR CORPORATION**  
**NORTH WILKESBORO, N. C.**

#### **EXHIBIT A**

**Carolina Mirror Corporation**  
**North Wilkesboro, N. C.**

**Names and address of plain mirror customers:**

#### **FURNITURE MANUFACTURERS**

<b>Name</b>	<b>Address</b>
American Furniture Company	North Wilkesboro, N. C.
Brooks-Wood Products	Tazewell, Tennessee
Caldwell Furniture Company	Lenoir, N. C.
Cavalier Corporation	Chattanooga, Tennessee
Charleson's Products, Inc.	1630 12th Street Santa Monica, Calif.
Circle Furniture Manufacturers	201-209 Richards St. Brooklyn, New York
Continental Furniture Co.	High Point, N. C.
Davis Cabinet Company	Nashville, Tennessee
Defrosto Mirror & Supply Co.	10810 Garfield Avenue South Gate, Calif.
Drew Furniture Company	North Wilkesboro, N. C.
Drexel Furniture Company	Drexel, North Carolina
Eisen Brothers	1601-1635 Willow Avenue Hoboken, New Jersey
Elkin Furniture Company	Elkin, North Carolina
Forest Furniture Co.	North Wilkesboro, N. C.
Gluck Brothers	Morristown, Tennessee
Harper Furniture Company	Lenoir, N. C.
Heywood-Wakefield Company	937 South Alameda Blvd. Los Angeles, California
Hibriten Furniture Company	Lenoir, N. C.
Holder Brothers Furn. Company	Kernersville, N. C.

*Government's Exhibit 14.*

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CAROLINA MIRROR CORPORATION  
NORTH WILKESBORO, N. C.

Hollycraft Furn. Mfg. Co.	3520 S. Main St. Los Angeles, Calif.
Hoover Chair Company	Lexington, N. C.
Imperial Cabinet Company	742 East 14 Place Los Angeles, Calif.
Kemp Furniture Company	Goldsboro, N. C.
Kincaid Furniture Company	Hudson, N. C.
Barnwell Industries	Route #3 Sumter, S. C.
Cochrane Furniture Company	Lincolnton, N. C.
Conover Furniture Company	Lenoir, N. C.
Furniture Industries	Florence, S. C.
Henredon Furniture Corp.	Morganton, N. C.
White Furniture Company	Mebane, N. C.
National Chair Company	Clark, Rahway, New Jersey
National Furniture Company	Mt. Airy, N. C.
Philpott Furniture Corp.	Lexington, N. C.
Regent Mfg. Company	2325 Banger Street Baltimore, Md.
Robert's Furniture Company	8 Magnolia St., Box 354 Asheville, N. C.
L. Ronney & Sons	1531-35 East 20th Street Los Angeles, Calif.
Lenoir Chair Company	Lenoir, N. C.
Lenoir Furn. Company	Lenoir, N. C.
Liberty Chair Company	Liberty, N. C.
Los Angeles Period Mfg. Co.	1838 East Santa Barbara Los Angeles 58, Calif.
The Mengel Company	Louisville, Kentucky

*Government's Exhibit 27.*

December 3, 1956

Furniture Manufacturers—plain mirror customers for the year 1954.

Mount Airy Mantel & Table Co., Mount Airy, N. C.  
National Furniture Company, Mount Airy, N. C.  
New Orleans Furn. Mfg. Co., Columbia, Miss.  
United Furniture Corp., Lexington, N. C.  
Gregg Furniture Co., Orangeburg, S. C.  
Florida Furniture Co., Palatka, Florida  
Mount Airy Furniture Company, Mount Airy, N. C.  
Carolina Cabinet Company, Summit, S. C.  
Bienville Furn. & Mfg. Company, Los Angeles, Calif.  
Mount Airy Chair Company, Mount Airy, N. C.  
Link-Taylor Corp., Lexington, N. C.  
Oklahoma Furniture Mfg. Co., Guthrie, Okla.  
Basic-Witz Furn. Ind., Staunton, Virginia  
Quincy Millwork, Quincy, Fla.  
Stylaneze, Inc., 2640 S. W. 28th Lane, Miami, Fla.  
Empire Furniture Corp., Johnson City, Tenn.  
Mullins Lumber Co., Mullins, S. C.  
Dixie Furniture Co., Lexington, N. C.  
Kemp Specialty Co., Goldsboro, N. C.  
Sandhill Furniture Corp., West End, N. C.

Total amount of sales to these customers for year 1954—

\$366,179.96

MOUNT AIRY MIRROR COMPANY  
MOUNT AIRY, N. C.

*Government's Exhibit 14.*

—3—

**CAROLINA MIRROR CORPORATION**

**NORTH WILKESBORO, N. C.**

<b>Morris Furniture Mfg. Company</b>	4433 South Alameda Street Los Angeles 11, Calif.
<b>Mt. Airy Furniture Company</b>	Mt. Airy, N. C.
<b>Mullins Lumber Company</b>	Mullins, S. C.
<b>Sutter's Hand Made Furniture</b>	Route U. S. 11, One Mile So Harrisonburg, Virginia
<b>Vermont Furniture Company</b>	Winooski, Vermont
<b>Williams Furniture Company</b>	Sumter, S. C.
<b>Empire Furniture Company</b>	Johnson City, Tennessee
<b>Essex Chair Company</b>	Box 594 Union, New Jersey
<b>Fashion Chair Company</b>	637 South Clarence Los Angeles 23, Calif.
<b>Forest Products Company</b>	Morristown, Tennessee
<b>Gravely Furn. Company, Inc.</b>	Martinsville, Va.
<b>Johnson-Carper Furn. Company</b>	Roanoke, Va.
<b>Mount Airy Mantel &amp; Table Co.</b>	Mt. Airy, N. C.
<b>Oak Furniture Company</b>	North Wilkesboro, N. C.
<b>A. Brandt Company, Inc.</b>	1701 East Lancaster Fort Worth, Texas
<b>California Furn. Shops</b>	6241 Telegraph Road Los Angeles 22, Calif.
<b>Cherman Furn. Mfg. Company</b>	5607 Santa Fe Avenue Los Angeles 58, Calif.
<b>United Furniture Corporation</b>	Lexington, N. C.
<b>Vaughan Furniture Company</b>	Galax, Va.
<b>Vaughan-Bassett Furn. Company</b>	Galax, Va.
<b>Young Mfg. Company</b>	Norwood, N. C.
<b>Southern Furniture Company</b>	Mableton, Ga.
<b>Southland Wood Products</b>	Box 1884 Greensboro, N. C.
<b>Stylemaker Furn. Company</b>	Ferdinand, Indiana

**R 15 147**



*Government's Exhibit 14.*

~~4~~

CAROLINA MIRROR CORPORATION

NORTH WILKESBORO, N. C.

Talney Mfg. Company

6527 McKinley Avenue  
Los Angeles, Calif.

The Three Mountaineers

Asheville, N. C.

R 15 148

*Government's Exhibit 27.*

December 3, 1956

**Furniture Manufacturers—plain mirror customers for the year 1953**

Mount Airy Mantel & Table Co., Mount Airy, N. C.  
National Furniture Company, Mount Airy, N. C.  
New Orleans Furn. Mfg., Columbia, Miss.  
United Furniture Corporation, Lexington, N. C.  
Gregg Furn. Co., Orangeburg, S. C.  
Bienville Furn. & Mfg. Co., Los Angeles, Calif.  
Carolina Cabinet Company, Summit, S. C.  
Stylaneze, Inc., 2640 S. W. 28th Lane, Miami, Fla.  
Mount Airy Furniture Company, Mount Airy, N. C.  
G. W. Summerour & Co., Winder, Ga.  
Mullins Lumber Co., Mullins, S. C.  
Dixie Furniture Company, Lexington, N. C.  
Kemp Specialty Furniture, Goldsboro, N. C.  
Oklahoma Furniture Mfg. Co., Guthrie, Okla.  
Century Furniture Co., Hickory, N. C.  
Greater New York Mirror & Frame Co., New York, N. Y.  
Florida Furniture Ind., Inc., Palatka, Florida  
Link-Taylor Corp., Lexington, N. C.  
Empire Furniture Corp., Johnson City, Tenn.  
Basic-Witz Furn., Staunton, Virginia  
Quincy Millwork, Quincy, Florida  
White Furniture Co., Mebane, N. C.

**Total amount of sales to these customers for year 1953—**

**\$517,754.36**

**MOUNT AIRY MIRROR COMPANY  
MOUNT AIRY, N. C.**

**Government's Exhibit 15.****Carolina Mirror Schedule of Gross Annual Sales for Years  
1953, 1954, 1955.****CAROLINA MIRROR CORPORATION*****Manufacturers of Mirrors*****EDD F. GARDNER****NORTH WILKESBORO, N. C.*****President and Manager*****EXHIBIT B****Carolina Mirror Corporation  
North Wilkesboro, N. C.****Total amount of gross annual sales in each of the fol-  
lowing classes of trade for the years 1953, 1954, 1955**

	<b>1953</b>	<b>1954</b>	<b>1955</b>
(i) Furniture Manufacturers .....	\$3,087,025	\$3,265,350	\$4,521,000
(ii) Store fixture Manufacturers.....	None	None	None
(iii) Glass or mirror jobbers.....	437,141	565,368	402,000
(iv) Retail trade .....	1,636,031	1,447,551	1,213,000
(v) Each other class of trade regularly solicited or sold Medicine Cabinet.....	710,848	968,739	1,432,000

**R 15 149**

**Government's Exhibit 16.**

**Galax Mirror Announcement 78% Discount Off 1950 List  
Dated October 29, 1954 Effective Upon Receipt.**

**GALAX MIRROR COMPANY  
INCORPORATED**

**MESSER INDUSTRIES**

*Manufacturers of Mirrors*      **GALAX, VIRGINIA**

CARROLL FURNITURE CO., INC.  
GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CO., INC.

October 29, 1954

Gentlemen:

We regret to announce that on account of higher costs at the present time and scarcity of plate glass, it is necessary to withdraw all previous prices and quotations.

Any orders on hand before this letter reaches you will be filled at the price taken. Any orders we receive after you receive this letter will be billed at the new price.

One of the plate glass factories had to throw away a half million feet of plate glass on account of bad workmanship or machinery breakdown and the other plate glass factory has been under strain furnishing glass and taking care of the storm areas.

The mirror manufacturers have not been able to accumulate any stock on account of the mirror war because they were not able to pay for it at the time they could get it, and we prophesy that there will be a shortage of plate glass for sometime to come.

The plate glass factory that had the bad luck has not shipped any plate glass to the mirror manufacturers for several weeks and it will be two more weeks before they will be able to do so.

Any orders received will be given as prompt attention as possible and, if we do not have the sizes, we will notify you when we expect to have them.

We are quoting you a new price of 78 off the 1950 list; 1/2 cent per inch for edge work; 1 cent an inch for bevel work, and 2% cash discount.

Yours very truly,

**GALAX MIRROR COMPANY, INC.**

s/ J. A. MESSER, JR.  
J. A. Messer, Jr.

**R 11-21**

**JAMjr/M**

**118 08**

## Government's Exhibit 22.

### Schedule of Galax Price Announcement Changes from 16 June 1953 to 15 June 1956.

#### TO MANUFACTURERS OF FURNITURE.

Letters			
June	16, 1953	79 off—plain mirrors	
"	16, "	78 off—polished edge work	
"	16, "	77 off—beveled work	
September	1, "	78 off—beveled work	
"	1, "	79 off—polished edge work	
"	1, "	80 off—plain mirrors	
November	3, "	80 & 10 off—plain mirrors	
"	3, "	79 & 5 off—polished edge work	
"	3, "	78 & 5 off—beveled work	
December	28, "	80 & 10 off—plain mirrors	
"	28, "	79 & 10 off—polished edge work	
"	28, "	78 & 10 off—beveled work	
January	14, 1954	80 & 10 off—plain mirrors	
"	14, "	79 & 10 off—polished edge work	
"	14, "	78 & 10 off—beveled work	
October	29, 1954	78 off—plus extra work	
September	16, 1955	77 off—plus extra work	
June	15, 1956	76 off—plus extra work	

**R 11 15**

**Galax**



**Government's Exhibit 23.**

**Undated Galax Schedule of Sales of Plate Glass Mirrors to  
Furniture Manufacturers for Years 1953 (\$1,345,230.25),  
1954 (\$815,565.11), 1955 (\$1,122,753.29),  
1956 (\$1,034,075.85).**

**GALAX MIRROR COMPANY  
INCORPORATED**

**MESSER INDUSTRIES**

*Manufacturers of Mirrors*      **GALAX, VIRGINIA**

**GALAX FURNITURE CO., INC.**

**GALAX MIRROR CO., INC.**

**MT. AIRY MIRROR CO., INC.**

**WEBB FURNITURE CORPORATION**

**INDUSTRIAL DEPARTMENT**

**Sales to Furniture Manufacturers**

<u>Year</u>	<u>Plate Glass Mirrors</u>
1953.....	\$1,345,250.25
1954.....	1,815,565.11 (should be \$815,565.11)
1955.....	1,122,753.29
1956.....	1,034,075.85

**Government's Exhibit 24.****Undated Galax List of Furniture Customers  
for Years 1953-1955.****GALAX MIRROR COMPANY**

Incorporated

*Manufacturers of Mirrors GALAX, VIRGINIA*

GALAX FURNITURE CO., INC.  
 GALAX MIRROR CO., INC.  
 MT. AIRY MIRROR CO., INC.  
 WEBB FURNITURE CORPORATION

**CUSTOMERS FOR 1953**

American Furniture Company Martinsville, Virginia	Plate Glass Mirrors
American Novelty Furniture Co. Petersburg, Virginia	Plate Glass Mirrors
Atlantic Picture Frame Co. 1083 Broadway Brooklyn, New York	Plate Glass Mirrors
The Brunswick Balke Collender Co. Marion, Virginia	Plate Glass Mirrors
Bienville Furniture & Mfg. Co. 1105 E. Main New Iberia, La.	Plate Glass Mirrors
Carroll Furniture Company Galax, Virginia	Plate Glass Mirrors
Cavalier Corporation Chattanooga, Tennessee	Plate Glass Mirrors
Chicago Table Company 1805 East End Avenue Chicago Heights, Ill.	Plate Glass Mirrors
Crescent Mfg. Company Gallatin, Tennessee	Plate Glass Mirrors
Camden Furniture Company Camden, Ark.	Plate Glass Mirrors
Eisen Brothers, Ind. 1601-1635 Willow Avenue Hoboken, New Jersey	Plate Glass Mirrors
Edison Wood Products New London, Wisconsin	Plate Glass Mirrors
Gluck Brothers, Inc. Morristown, Tennessee	Plate Glass Mirrors
S. R. Hungerford & Sons Memphis, Tennessee	Plate Glass Mirrors

*Government's Exhibit 24.***GALAX MIRROR COMPANY**

Incorporated

*Manufacturers of Mirrors* GALAX, VIRGINIA

GALAX FURNITURE CO., INC.  
 GALAX MIRROR CO., INC.  
 MT. AIRY MIRROR CO., INC.  
 WEBB FURNITURE CORPORATION

page 2

1953

Johnston-Carper Furniture Co.  
 Roanoke, Virginia

David M. Lea & Company  
 Richmond, Virginia

Lincoln Industries, Inc.  
 Damascus, Virginia

The Norwood Mfg. Company  
 Sumter, South Carolina

The Norwood Mfg. Company  
 McGregor, Texas

Oak Furniture Company  
 North Wilkesboro, N. C.

Puritan Furniture Mfg. Co.  
 Melrose, Mass.

Quality Furniture Products  
 1014 Jefferson Avenue  
 Newport News, Virginia

Stanley Furniture Co.  
 Stanleytown, Va.

Joseph Turk Mfg. Company  
 Bradley, Illinois

Vaughan Furniture Company  
 Galax, Virginia

Vaughan-Bassett Furniture  
 Galax, Virginia

Webb Furniture Corporation  
 Galax, Virginia

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

*Government's Exhibit 24.*

**GALAX MIRROR COMPANY**  
**Incorporated**

*Manufacturers of Mirrors* GALAX, VIRGINIA

GALAX FURNITURE CO., INC.  
 GALAX MIRROR CO., INC.  
 MT. AIRY MIRROR CO., INC.  
 WEBB FURNITURE CORPORATION

**CUSTOMERS FOR 1954**

American Furniture Company Martinsville, Virginia	Plate Glass Mirrors
Athens Bed Company Athens, Tennessee	Plate Glass Mirrors
T. Baumritter Company 171 Madison Avenue New York City, N. Y.	Plate Glass Mirrors
Camden Furniture Company Camden, Ark.	Plate Glass Mirrors
Carroll Furniture Company Galax, Virginia	Plate Glass Mirrors
Cavalier Corporation Chattonooga, Tennessee	Plate Glass Mirrors
Chicago Table Company 1805 East End Avenue Chicago Heights, Illinois	Plate Glass Mirrors
Collegedale Wood Products, Inc. Collegedale, Tennessee	Plate Glass Mirrors
Crescent Furniture Company Gallatin, Tennessee	Plate Glass Mirrors
Gluck Brothers, Inc. Morristown, Tennessee	Plate Glass Mirrors
Coleman Enterprises Corp. Glen Rock, Pa.	Plate Glass Mirrors
Essex Chair Company Union, New Jersey	Plate Glass Mirrors
Edison Wood Products New London, Wisconsin	Plate Glass Mirrors
S. R. Hungerford & Company Memphis, Tennessee	Plate Glass Mirrors
B. F. Huntley Furniture Co. Winston-Salem, N. C.	Plate Glass Mirrors

*Government's Exhibit 24.***GALAX MIRROR COMPANY**

Incorporated

*Manufacturers of Mirrors GALAX, VIRGINIA*

GALAX FURNITURE CO., INC.  
 GALAX MIRROR CO., INC.  
 MT. AIRY MIRROR CO., INC.  
 WEBB FURNITURE CORPORATION

Page —2—

Hampton Shops of Virginia  
 Newport News, Virginia.  
 Johnson-Carper Furniture Co.  
 Roanoke, Virginia  
 David M. Lea & Company  
 Richmond, Virginia  
 Lincoln Industries, Inc.  
 Damascus, Virginia  
 The Mengel Company  
 Louisville, Ky.  
 Morristown Chest Company  
 Morristown, Tennessee  
 Norwood Mfg. Company  
 Sumter, S. C.  
 Norwood Mfg. Company  
 McGregor, Texas  
 Norwood Mfg. Company  
 New Bedford, Mass.  
 Oak Furniture Company  
 North Wilkesboro, N. C.  
 Stanley Furniture Company  
 Stanleytown, Virginia  
 Joseph Turk Mfg. Company  
 Bradley, Illinois  
 Vincent Furniture Company  
 Athens, Tennessee  
 Vermont Furniture Company  
 Winooki, Vermont  
 Webb Furniture Company  
 Galax, Virginia  
 Wytheville Chair Company  
 Wytheville, Virginia

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

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Plate Glass Mirrors

Plate Glass Mirrors



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*Government's Exhibit 24.*

**GALAX MIRROR COMPANY**  
Incorporated

*Manufacturers of Mirrors* GALAX, VIRGINIA

GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CORPORATION

Page -3-

Mississippi Products  
Jackson, Mississippi

Plate Glass Mirrors

*Government's Exhibit 24.***GALAX MIRROR COMPANY**

Incorporated

*Manufacturers of Mirrors GALAX, VIRGINIA*

GALAX FURNITURE CO., INC.  
 GALAX MIRROR CO., INC.  
 MT. AIRY MIRROR CO., INC.  
 WEBB FURNITURE CO., INC.

**CUSTOMERS FOR 1955**

American Furniture Company Martinsville, Virginia	Plate Glass Mirrors
Athens Bed Company Athens, Tennessee	Plate Glass Mirrors
T. Baumritter Company, Inc. 171 Madison Avenue New York City, N. Y.	Plate Glass Mirrors
Carroll Furniture Company Galax, Virginia	Plate Glass Mirrors
Camden Furniture Company Camden, Ark.	Plate Glass Mirrors
Cavalier Corporation Chattanooga, Tennessee	Plate Glass Mirrors
Chicago Table Company 1805 East End Avenue Chicago Heights, Illinois	Plate Glass Mirrors
A. E. Coburn Mfg. Company Greene, Maine	Plate Glass Mirrors
Coleman Enterprises Glen Rock, Pa.	Plate Glass Mirrors
Collegedale Wood Products Collegedale, Tennessee	Plate Glass Mirrors
Colony Furniture Company Linden, New Jersey	Plate Glass Mirrors
Crescent Furniture Company Gallatin, Tennessee	Plate Glass Mirrors
Edison Wood Products New London, Wisconsin	Plate Glass Mirrors
Gluck Brothers, Inc. Morristown, Tennessee	Plate Glass Mirrors

*Government's Exhibit 24.*

**GALAX MIRROR COMPANY**

Incorporated

*Manufacturers of Mirrors* GALAX, VIRGINIA

GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CORPORATION

Page -2-

Georgia Art Supply Company  
280 Garnett St. S. E.  
Atlanta, Ga.

Plate Glass Mirrors

General Automatic Products, Co.  
Lafayette St.  
Claremont, N. H.

Plate Glass Mirrors

Hampton Shops of Virginia  
1014 Jefference St.  
Newport News, Virginia

Plate Glass Mirrors

S. R. Hungerford & Company  
Memphis, Tennessee

Plate Glass Mirrors

B. F. Huntley Furniture Co.  
Winston-Salem, N. C.

Plate Glass Mirrors

David M. Lea & Company  
Richmond, Virginia

Plate Glass Mirrors

Lincoln Industries, Inc.  
Damascus, Virginia

Plate Glass Mirrors

The Mengel Company  
Louisville, Ky.

Plate Glass Mirrors

Mississippi Products  
Jackson, Mississippi

Plate Glass Mirrors

New England Picture Frame Co.  
Providence, R. I.

Plate Glass Mirrors

Norwood Mfg. Company  
Sumter, S. C.

Plate Glass Mirrors

Norwood Mfg. Company  
Noblesville, Indiana

Plate Glass Mirrors

Norwood Mfg. Company  
McGregor, Texas

Plate Glass Mirrors

Norwood Mfg. Company  
New Bedford, Mass.

Plate Glass Mirrors

*Government's Exhibit 24.*

**GALAX MIRROR COMPANY**

**Incorporated**

*Manufacturers of Mirrors GALAX, VIRGINIA*

GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CORPORATION

Page —3—

Pemco Mfg. Company  
Portland, Maine

Puritan Furniture Mfg. Co.  
Melrose, Mass.

Stanley Furniture Company  
Stanleytown, Virginia

Superior Sleeprite Corp.  
759 S. Washtenaw Avenue  
Chicago, Illinois

Sprague & Carlton, Inc.  
Milford Division  
Milford, N. H.

Joseph Turk Mfg. Company  
Bradley, Illinois

Wayne Mfg. Company  
Waynesboro, N. C.

Webb Furniture Company  
Galax, Virginia

Wytheville Chair Company  
Wytheville, Virginia

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

Plate Glass Mirrors

**Government's Exhibit 25.**

**Mount Airy Announcement of Discount 78% Off 1950 List  
Dated 29 October 1954 Effective Immediately.**

**MT. AIRY MIRROR COMPANY  
Incorporated**

*Manufacturers of Mirrors* MT. AIRY, NORTH CAROLINA

CARROLL FURNITURE CO., INC.  
GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CO., INC.

October 29, 1954

Gentlemen:

Withdrawing all previous quotations for plate glass mirrors, we quote the following prices, effective immediately:

Plain plate mirrors 1950 list less 78%; 1/2 inch bevel one cent per inch; 3/4 inch bevel 1 1/2 cent per inch; edge-work 1/2 cent per inch.

Terms are 2%/10 E.O.M.

This increase is necessary because of increased material and labor costs and the current shortage of plate glass.

Mirrors now on order will be billed at price prevailing at time of acceptance of order.

Very truly yours,

MOUNT AIRY MIRROR COMPANY, INC.  
J. M. CHEEK, JR.  
J. M. CHEEK, JR.

JMCjr/M

R 10 25



## **Government's Exhibit 27.**

### **Mount Airy List of Plain Mirror Furniture Customers for Years 1953, 1954, 1955 Dated December 3, 1956.**

**December 3, 1956**

#### **Furniture Manufacturers—plain mirror customers for the year 1955**

National Furniture Company, Mount Airy, N. C.  
United Furniture Company, Lexington, N. C.  
Mount Airy Chair Company, Mount Airy, N. C.  
Mount Airy Mantel & Table Co., Mount Airy, N. C.  
Stylaneze, Inc., 2640 S. W. 28th Lane, Miami, Florida  
Bradford Furniture Corp., Starke, Fla.  
Florida Furniture Ind., Inc., Palatka, Florida  
New Orleans Furn. Mfg. Company, Columbia, Miss.  
Mount Airy Furniture Co., Mount Airy, N. C.  
Carolina Cabinet Company, Summit, S. C.  
Bienville Furn. Mfg. Co., Los Angeles, Calif.  
Link-Taylor Corp., Lexington, N. C.  
Oklahoma Furn. Mfg. Company, Guthrie, Okla.  
Empire Furniture Corp., Johnson City, Tenn.  
Dixie Furniture Company, Lexington, N. C.  
Elkin Furniture Company, Elkin, N. C.  
Mullins Lumber Co., Mullins, S. C.  
Austell Cabinet Co., Austell, Ga.  
Sandberg Furn. Mfg. Co., Los Angeles, Calif.  
Kemp Specialty Company, Goldsboro, N. C.  
Foster-McDavid Furn. Co., Tampa, Florida  
Basic-Witz Furn. Ind., Staunton, Virginia  
Dillon Mfg. Company, Mooresville, N. C.

**Total amount of sales to these customers for year 1955—  
\$568,551.77**

**MOUNT AIRY MIRROR COMPANY  
MOUNT AIRY, N. C.**

*Government's Exhibit 27.*

December 3, 1956

Furniture Manufacturers—Not plain mirrors—Shadow Box  
and mounted mirrors

American Furniture Company, Martinsville, Virginia  
Webb Furniture Company, Galax, Virginia  
Stylaneze, Inc., Miami, Florida  
Summit-Woodcraft, Hialeah, Florida

Total amount of sales to these customers for year 1955—  
\$83,735.00

Did not sell this style mirror to furniture customers during  
years 1953 and 1954.

MOUNT AIRY MIRROR COMPANY  
MOUNT AIRY, N. C.

R 10 58

## Government's Exhibit 28.

**Undated List of Virginia Mirror Furniture Customers**  
**Showing Volume of Sales for 1953 (\$799,047.82),**  
**1954 (\$946,991.16), 1955 (\$1,277,630.75).**

### FURNITURE MANUFACTURERS

#### Sales:

1953 .....	\$ 799,047.82
1954 .....	\$ 946,991.16
1955 .....	\$1,277,630.75

American Furniture Co., Martinsville, Va.  
 American Novelty Furn. Co., Petersburg, Va.  
 Angelus Furn. Co., 3650 E. Olympic Blvd., Los Angeles, Calif.  
 Bald Knob Furn. Co., Rocky Mount, Va.  
 Bassett Chair Co., Bassett, Va.  
 J. D. Bassett Mfg. Co., Bassett, Va.  
 Barker Mfg. Co., 1100 N. E. 28th Ave., Portland, Oregon.  
 Belvedere Mfg. Co., 834 N. Spring St., Los Angeles, Calif.  
 Brandt Cabinet Works, Hagerstown, Md.  
 Calcraft Company, 1622 S. Magnolia Ave., Monrovia, Calif.  
 Chicago Table Co., 1803 West End Ave., Chicago Heights, Ill.  
 Charleson Products, 1630—12th St., Santa Monica, Calif.  
 Cherman Furn. Mfg. Co., 5507 Santa Fe Ave., Los Angeles, Calif.  
 Delker Mfg. Co., Inc., Henderson, Ky.  
 Empire Furn. Corp., Johnson City, Tenn.  
 Filbar Furn. Mfg. Co., 2828 Butler Ave., Lynwood, Calif.  
 Gluck Brothers, Morristown, Tenn.  
 F. S. Harmon Mfg. Co., 1938 Pacific Ave., Tacoma, Wash.  
 Hooker Furn. Co., Martinsville, Va.  
 B. P. John Furn. Corp., 5200 S. W. Macadam, Portland, Oregon.  
 Los Angeles Period Furn. Co., 1838 E. Santa Barbara, Los Angeles, Calif.  
 Morris Furn. Co., 4433 Alameda St., Los Angeles, Calif.  
 L. Ronney & Sons, 1531 E. 20th St., Los Angeles, Calif.  
 Sandberg Furn. Co., 5705 Alcoa Ave., Los Angeles, Calif.  
 Sun Glow Furn., Ind., Inc., Logan, Ohio  
 Vaughan-Bassett Furn. Co., Galax, Va.  
 Vaughan Furn. Co., Galax, Va.  
 Consider H. Willett, Inc., 3001 W. Kentucky St., Louisville, Ky.

Virginia Mirror Co., Inc.  
 Exhibit No. A

**Government's Exhibit 30.**

**Virginia Mirror Announcement of 78% Discount Off 1950  
List Dated 29 October 1954 Effective Immediately.**

**VIRGINIA MIRROR Co., INC.  
Martinsville, Va.**

**October 29, 1954.**

**TO THE TRADE:**

Owing to higher prices in most all materials entering into the manufacture of mirrors and higher labor costs, we are withdrawing all quotations—effective today.

Our new discount is 78% off 1950 Mirror List—Terms 2%—10—Net 30.

Thanking you for past favors, we are,

**Very truly yours,**

**VIRGINIA MIRROR COMPANY, INC.**

By .....

**K. H. HEARN.**

**KHH/s**

**Virginia Mirror Co., Inc.  
Exhibit No. 3**

**R 16 19**

**142 10**

**Government's Exhibit 32.**

**Virginia Mirror Announcement of 77% Discount Off 1950  
List Dated June 15, 1955 Effective Immediately.**

**VIRGINIA MIRROR Co., Inc.  
Martinsville, Va.**

**June 15, 1955.**

**To the Trade**

Owing to an advance in price of Plate Glass, we are withdrawing all outstanding quotations.

Our discount—effective today—is 77% off April 1950 list. Edgework prices remain as before.

Thanking you for past favors, we are,

Very truly yours,

**VIRGINIA MIRROR COMPANY, INC.**

By .....  
W. C. BEELER—Vice-President.

WCB/s

**Virginia Mirror Co., Inc.  
Exhibit No. 10**



**Government's Exhibit 33.****Virginia Mirror Announcement to Trade Withdrawing  
Prices and Delivery Owing to Breakdown in Plate  
Glass Supply Dated November 4, 1954.**

VIRGINIA MIRROR CO., INC.  
Martinsville, Va.

November 4, 1954.

**TO THE TRADE:**

Owing to a breakdown in Plate Glass manufacture, we are withdrawing all prices and delivery dates.

We will advise by letter as soon as we receive any definite promises from the Plate Glass Factories.

Very truly yours,

VIRGINIA MIRROR COMPANY, INC.,

By .....

K. H. HEARN

KHH/s

R. 16 20

Virginia Mirror Co., Inc.  
Exhibit No. 4

142 11

**Government's Exhibit 36.**

**Weaver Schedule of Furniture Manufacturers and Sales  
for Fiscal Years Ending November 30 for Years  
1953 (\$290,857.69), 1954 (\$266,175.28),  
1955 (\$353,768.73).**

**MIRRORS SOLD TO FURNITURE MANUFACTURERS**

Year—1953 .....	\$290,857.69
Year—1954 .....	266,175.28
Year—1955 .....	353,768.73

**Names and addresses of Furniture Manufacturers:**

Stanley Furniture Company  
Stanleytown, Virginia

Bald Knob Furniture Company .  
Rocky Mount, Virginia

Vaughn Bassett Furniture Company  
Galax, Virginia

Vaughn Furniture Company  
Galax, Virginia

Hooker Furniture Company  
Martinsville, Virginia

Johnson-Carper Furniture Company  
Roanoke, Virginia

Note: All Sales are for the fiscal year ending November 30.

**Government's Exhibit 37.**

**Weaver Mirror Announcement of 78% Discount Off 1950  
List Dated 29 October 1954.**

**WEAVER MIRROR COMPANY**  
Manufacturers of  
**QUALITY**  
**MIRRORS**  
Rocky Mount, Virginia

**R. E. WEAVER**  
President

October 29, 1954

Bald Knob  
Stanley Furn. Co.  
Vaughan Furn. Co.  
Vaughan-Bassett

**TO OUR CUSTOMERS:**

As you probably know for the past year and a half, we have been selling mirrors at a lower price than prior to that time. Notwithstanding the fact that during this same period, we have had two advances in the price of plate glass.

Consequently, we find we have been operating at a loss, and this condition cannot continue if we expect to stay in business. Therefore, we must advance our prices and effective immediately, we quote 78% discount from the 1950 mirror list. No change in edgework or beveling prices.

All orders on file prior to this date will be invoiced at the old price.

Yours very truly,

**WEAVER MIRROR Co., INC.**

**R. E. WEAVER**  
President.

REW:SM

**Government's Exhibit 39.**

**Weaver Mirror Announcement of 77% Discount Off 1950  
List Dated and Effective 5 July 1955.**

July 5, 1955

Copy to Stanley

Bald Knob Furniture Company  
Rocky Mount, Virginia

Attention: Mr. R. H. Robinson

Gentlemen:

Due to a recent advance in plate glass, we are forced to change our mirror discount effective as of today to 77% off the April 1, 1950 mirror list.

Yours very truly,

WEAVER MIRROR COMPANY, INC.  
President.

REW:sm

R 14-11

143 1

**Government's Exhibit 40.****Weaver's Schedule of Discount Announcements to Furniture Manufacturers from 1 January 1953 to 1956.**Quotations To Furniture Manufacturers:

January 1, 1953 through March 25, 1954.....	79% off April 1, 1950 List
*March 26, 1954 through Octo- ber 28, 1954.....	80% off April 1, 1950 List
October 29, 1954 through July 4, 1955.....	78% off April 1, 1950 List
July 5, 1955 through June 7, 1956 .....	77% off April 1, 1950 List
July 8, 1956 to present date.. June ..	76% " " " " "

REW.

\*Change of March 26, 1954, was evidently made by telephone and no record was kept of that.

REW

**R 14 2**



## Government's Exhibit 42.

### Stroupe's Schedule of Sales to Furniture Manufacturers Listed for Years 1953, 1954, 1955.

MAIN OFFICE  
THOMASVILLE, N. C.  
TELEPHONE 2776

WALL MIRROR  
ASSEMBLY PLANT  
HIGH POINT, N. C.

STROUPE MIRROR COMPANY  
Mirrors • Unframed • Framed • Venetian  
Thomasville, North Carolina

#### Appendix

#### Part 1 Plain Mirror Customers 1953.

- (i) Furniture Manufacturers  
1953 Sales to this Class of Trade: ..... \$448,712.10

<u>Firm Name</u>	<u>Address</u>
Williams Furniture Corporation	Sumter, S. C.
Carolina Furniture Works	Sumter, S. C.
Biltwell Chair Company	Denton, N. C.
Ramseur Furniture Company	Ramseur, N. C.
Wright's Furniture & Cabinet Works	Asheboro, N. C.
Welch Furniture Company	High Point, N. C.
Lucas National, Inc.	Asheboro, N. C.
Sumter Cabinet Company	Sumter, S. C.
Thomasville Cabinet Works	Thomasville, N. C.
Imperial of Asheboro	Asheboro, N. C.
Colonial Manufacturing Company	Thomasville, N. C.
Furniture Industries	Florence, S. C.
W. A. Brown & Sons	Salisbury, N. C.

- (ii) Store Fixture Manufacturers. 1953 Sales: ..... \$ 1,083.40  
Hanover Distributing Company ..... Charlotte, N. C.
- (iii) Glass or Mirror Jobbers. 1953 Sales: ..... \$13,764.85  
Pittsburgh Plate Glass Company ..... High Point, N. C.
- (iv) Retail Trade. 1953 Sales: ..... None
- (v) Each Other Class of Trade. 1953 Sales: ..... None

## Government's Exhibit 42.

MAIN OFFICE  
THOMASVILLE, N. C.  
TELEPHONE 2776

WALL MIRROR  
ASSEMBLY PLANT  
HIGH POINT, N. C.

STROUPE MIRROR COMPANY  
Mirrors • Unframed • Framed • Venetian  
Thomasville, North Carolina

### Appendix

#### Part 1 Plain Mirror Customers 1954

##### (i) Furniture Manufacturers

1954 Sales to this Class of Trade:..... \$473,364.42

##### Firm Name

##### Address

Lucas National, Inc.	Asheboro, N. C.
Williams Furniture Corporation	Sumter, S. C.
Sumter Cabinet Company	Sumter, S. C.
Carolina Furniture Works	Sumter, S. C.
B. F. Huntley Furniture Company	Winston-Salem, N. C.
Melder Bros. Manufacturing Company	Kernersville, N. C.
Thomasville Cabinet Works	Thomasville, N. C.
Ramseur Furniture Company	Ramseur, N. C.
Biltwell Chair & Furniture Company	Denton, N. C.
Hahn's Cabinet Shop	Albemarle, N. C.
Dillon Manufacturing Company	Mooresville, N. C.
Modern Lounge	Trinity, N. C.
Wright's Furniture & Cabinet Works	Asheboro, N. C.
Hi-Way Furniture & Uph. Company	Newton, N. C.
Wenco Manufacturing Company	Wendell, N. C.
Colonial Manufacturing Company	Thomasville, N. C.
Welch Furniture Company	High Point, N. C.
Standard Chair Company	Thomasville, N. C.
Imperial of Asheboro	Asheboro, N. C.

(ii) Store Fixture Manufacturers. 1954 Sales:..... \$ 852.15  
Hanover Distributing Company Charlotte, N. C.

(iii) Glass or Mirror Jobbers. 1954 Sales:..... \$ 181.25  
Pittsburgh Plate Glass Company High Point, N. C.

(iv) Retail Trade. 1954 Sales:..... None

(v) Each Other Class of Trade. 1954 Sales:..... None

# Government's Exhibit 42.

MAIN OFFICE  
THOMASVILLE, N. C.  
TELEPHONE 2776

WALL MIRROR  
ASSEMBLY PLANT  
HIGH POINT, N. C.

STROUPE MIRROR COMPANY  
Mirrors • Unframed • Framed • Venetian  
Thomasville, North Carolina

## Appendix

### Part 1 Plain Mirror Customers 1955

#### (i) Furniture Manufacturers

1955 Sales to this Class of Trade: ..... \$748,088.98

#### Firm Name

#### Address

Williams Furniture Corporation	Sumter, S. C.
Thomasville Cabinet Works	Thomasville, N. C.
Sumter Cabinet Company	Sumter, S. C.
Ramseur Furniture Company	Ramseur, N. C.
Carolina Furniture Works	Sumter, S. C.
Biltwell Chair & Furniture Company	Denton, N. C.
B. F. Huntley Furniture Company	Winston-Salem, N. C.
Holder Bros. Manufacturing Company	Kernersville, N. C.
Lucas National, Inc.	Asheboro, N. C.
Philip-Carey Manufacturing Company	Middletown, Ohio
Crotts Woodworking Company	Thomasville, N. C.
Modern Lounge, Inc.	Trinity, N. C.
Hahn's Cabinet Shop	Albemarle, N. C.
Dillon Manufacturing Company	Mooresville, N. C.
F. A. Brown & Son	Salisbury, N. C.
Furniture Industries	Florence, S. C.
Wenco Manufacturing Company	Wendell, N. C.
H. L. Lambeth Furniture	Thomasville, N. C.
Colonial Furniture Manufacturing Co.	Thomasville, N. C.
Jackson-Williams Manufacturing Company	Thomasville, N. C.

(ii) Store-Fixture Manufacturers. 1955 Sales: ..... \$ 1,386.59  
Hanover Distributing Company Charlotte, N. C.

(iii) Glass or Mirror Jobbers. 1955 Sales: ..... None

(iv) Retail Trade. 1955 Sales: ..... None

(v) Each Other Class. 1955 Sales: ..... None

**Government's Exhibit 46.**

**Roanoke Grand Jury Subpoena Duces Tecum Addressed  
to Stroupe Mirror Dated November 16, 1956.**

X-46

Subpoena to Testify

**UNITED STATES DISTRICT COURT**

**FOR THE**

**WESTERN DISTRICT OF VIRGINIA**

**MX**

In Re: Grand Jury

To Stroupe Mirror Co.  
Thomasville, North Carolina

You are hereby commanded to appear in the United States District Court for the Western District of Virginia at Room 211A, Federal Building, in the City of Roanoke, on the 11th day of December 1956, at 10:30 o'clock a. m. to appear before the Grand Jury and bring with you the documents and records as described in the Appendix attached hereto and made a part hereof.

This subpoena is issued on application of the United States Attorney.

November 16, 1956  
John Strickler  
Attorney for Pl.  
Roanoke, Virginia

D. C. GENTRY, Clerk  
STELLA M. LANGFORD,  
Deputy Clerk.

**RETURN**

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I served it  
on the within named \_\_\_\_\_ by  
delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee

**Government's Exhibit 58.**

**PPG High Point Announcement of 78% Discount Off 1950  
List Dated and Effective 1 November 1954  
(Sanford Furniture).**

November 1, 1954.

Sanford Furniture Company  
Sanford, N. C.

Gentlemen:

Effective this date we withdraw previous prices on Plate Glass Mirrors, and quote on Plain Polished Plate Glass Mirrors a discount of 78% from List Price dated April 1st, 1950—F. O. B. your plant—2%, 30 days, net 60.

At the present no change will be made from our present prices for Edgework or Beveling.

All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance.

Yours very truly,

PITTSBURGH PLATE GLASS COMPANY

R 17 152

129 1263



**Government's Exhibit 59.**

**PPG High Point Announcement of 78% Discount Off 1950  
List Dated and Effective 1 November 1954  
(White Furniture).**

**November 1, 1954.**

**White Furniture Company  
Mebane, N. C.**

**Gentlemen:**

• Effective this date we withdraw previous prices on Plate Glass Mirrors, and quote on Plain Polished Plate Glass Mirrors a discount of 78% from List Price dated April 1st, 1950—F. O. B. your plant, 2%; 30 days, net 60.

At the present no change will be made from our present prices for Edgework or Beveling.

All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance.

**Yours very truly,**

**PITTSBURGH PLATE GLASS COMPANY**

**R 17 153**

**129 1264**

*Government's Exhibit 46.*

**X-46a**

for one day's attendance and the mileage allowed by law.

\_\_\_\_\_

By \_\_\_\_\_

Service Fees \_\_\_\_\_

Travel ..... \$ \_\_\_\_\_

Services ..... \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

*Government's Exhibit 46.*

X-46b

**Appendix**

(Unless otherwise designated or enumerated herein, the following terms used in the subpoena shall have the following meaning:

- A. "Corporation" shall mean the Stroupe Mirror Company
  - B. "Documents" shall mean the originals (or copies thereof where originals are not available) of minutes of meetings, price quotations, correspondence, memoranda, diaries, letters, telegrams, records of telephone conversations and inter- or intra-office communications, whether prepared, sent or received by the Corporation, in the possession or control of the Corporation, its officers or directors, and wherever located.)
1. Documents, or in lieu thereof lists or schedules, showing for each of the years 1953, 1954 and 1955, the names and addresses of plain mirror customers of the Corporation, and the total amount of its annual sales, in each of the following classes of trade:
    - (i) furniture manufacturers
    - (ii) store fixture manufacturers
    - (iii) glass or mirror jobbers
    - (iv) retail trade
    - (v) each other class of trade regularly solicited or sold

*Government's Exhibit 46.*

X-46c

2. All documents, during the period from January 1, 1952 to the date of the service of this subpoena, which refer or relate to any action or proposed action to be taken by

- (a) The Corporation,
- (b) any mirror manufacturer in Virginia or North Carolina, other than the Corporation,
- (c) any two or more mirror manufacturers in Virginia or North Carolina,

for the announcement, establishment, changing, maintenance or fixing of

- (i) discounts from list prices on plain mirrors,
- (ii) prices on plain mirrors (other than through discounts from list prices).

**Government's Exhibit 61,**  
**PPG High Point Mirror List Price Book**  
**Dated April 25, 1950.**

---

**PLAIN MIRRORS**

**LIST PRICES**

**APRIL 25, 1950**

**PPG**

**PITTSBURGH PLATE GLASS COMPANY**

**L. H. HANCOCK**  
**Manager**

**1 South Hamilton Street**  
**High Point, N. C.**

**Phones 3371 and 3372**



**Government's Exhibit 47.**

**Chicago Grand Jury Subpoena Duces Tecum Addressed  
to Stroupe Mirror Dated March 5, 1956.**

**X—47**

**Subpoena Duces Tecum**

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF ILLINOIS**

**January Term, 1955**

**THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**To: Stroupe Mirror Company  
Thomasville, North Carolina**

You are hereby commanded that laying aside all and singular your business and excuses you be and appear before the Grand Jury of the UNITED STATES DISTRICT COURT for the Northern District of Illinois, in Room 404, United States Courthouse, in the City of Chicago, in said District, on the 26th day of March, A. D. 1956, at 10:00 o'clock a. m. of said day, and also that you bring with you and produce at the time and place aforesaid:

1. All expense accounts, expense vouchers, memoranda of travel or expenses which relate or refer to any travel or business expense incurred by Grady V. Stroupe during the period from June 1, 1954 through November 30, 1954.

2. All price or discount letters, quotations, lists, price bulletins or price schedules received by your company from manufacturers or suppliers of polished plate glass which relate or refer to prices or discounts charged for polished plate glass and which were received by your company between January 1, 1954 and December 31, 1954.

***Government's Exhibit 47.***

**X—47a**

on behalf of the United States, and not depart the Court without leave thereof or of the District Attorney.

**HEREOF FAIL NOT** under penalty of what may befall you thereon.

**To the Marshal of the Middle District of North Carolina** to execute and return in due form of law.

**WITNESS, the HON. JOHN P. BARNES, Judge of the said Court, at Chicago, in said District, this 5th day of March, in the year of our Lord one thousand nine hundred and fifty-six, and of the Independence of the United States of America the 180th year.**

**ROY H. JOHNSON**

**Clerk.**

**Government's Exhibit 48.**

**Chicago Grand Jury Subpoena Duces Tecum Addressed  
to Stroupe Mirror Dated August 18, 1955.**

X-48 Subpoena Duces Tecum

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
January Term, 1955**

**THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**To: Stroupe Mirror Company  
Thomasville, North Carolina**

· YOU ARE HEREBY COMMANDED that laying aside all and singular your business and excuses you be and appear before the Grand Jury of the UNITED STATES DISTRICT COURT for the Northern District of Illinois, in Room 404, United States Courthouse, in the City of Chicago, in said District, on the 14th day of September, A. D. 1955, at 10:00 o'clock a.m. of said day, and also that you bring with you and produce at the time and place aforesaid,

All price or discount letters, quotations, lists, bulletins, or schedules used within your company or distributed to your customers to state or announce discounts from *List Prices of Plain Mirrors, April 1, 1950*, or other prices charged for mirrors by Stroupe Mirror Company during the period of time from January 1, 1953 to the date of this subpoena, to any or all of the following:

(a) Furniture manufacturers;

*Government's Exhibit 48.*

X-48a

- (b) Store fixture and refrigerator manufacturers;
- (c) Sash and door manufacturers;
- (d) Other fabricators;
- (e) Glass or mirror jobbers;
- (f) Mirror and beveling shops;
- (g) Glass stores and auto replacement shops; or
- (h) Any other class of trade regularly solicited or sold;

on behalf of the United States, and not depart the Court without leave thereof or of the District Attorney.

HEREOF FAIL NOT under penalty of what may befall you thereon.

To the Marshal of the Middle District of North Carolina to execute and return in due form of law.

WITNESS, the HON. J. SAM PERRY, Judge of the said Court, at Chicago, in said District, this 18th day of August, in the year of our Lord one thousand nine hundred and fifty-five, and of the Independence of the United States of America the 180th year.

-----  
Clerk

**Government's Exhibit 49.**

**Government Subpoena Duces Tecum to Stroupe Mirror  
for Production of Records at Roanoke Trial  
Dated October 4, 1957.**

**UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF VIRGINIA**

**UNITED STATES OF AMERICA**

**v.**

**PITTSBURGH PLATE GLASS COMPANY,  
et al.**

Criminal  
No. 5790

**To Stroupe Mirror Company  
Thomasville, North Carolina**

You are hereby commanded to appear in the United States District Court for the Western District of Virginia at the Federal Courthouse in the City of Roanoke, Virginia on the 18th day of November 1957 at 9:30 o'clock A.M. to testify in the case of United States *v. Pittsburgh Plate Glass Company et al.* and bring with you the records and documents described in the appendix attached hereto and made a part hereof.

This subpoena is issued upon application of the<sup>1</sup> United States.

October 4, 1957.

John Strickler, U. S. Attorney  
Roanoke, Virginia  
Samuel Karp, Attorney  
Department of Justice

C. E. GENTRY,  
Clerk.

By STELLA M. LANGFORD,  
Deputy Clerk.

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

**RETURN**

Received this subpoena at Greensboro, N. C. on Oct. 9, 1957 and on Oct. 9, 1957 at Thomasville, N. C. served it on the within named Stroupe Mirror Co. by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law. Robert E. Stroupe, Vice-President of Stroupe Mirror Co.

WM. B. SOMERS,  
U. S. Marshal,

By MELVIN STEMET,  
Deputy.

Dated: Oct. 10, 1957

**Service Fees**

Travel 48 miles.... \$4.80

Services (I) ..... .50

Total ..... \$5.30



*Government's Exhibit 49.*

**Appendix**

**To Subpoena Duces Tecum  
Addressed to Stroupe Mirror Company**

1. The original of a letter from Victor R. Hansen, Assistant Attorney General, Antitrust Division, to Stroupe Mirror Company (herein referred to as "Stroupe") dated March 11, 1957, requesting "List Prices of Plain Mirrors April 1, 1950".

2. Delivery receipts, books of account, records, compilations and other documents showing, for the years 1954 and 1955, the shipments (whether by Stroupe's own trucks or otherwise) of plate glass mirrors by Stroupe to furniture manufacturers located in states other than the State of North Carolina.

3. The records of Stroupe from which the data contained in the documents described below were derived (such documents having been submitted by Stroupe in Grand Jury Proceedings at Roanoke, Virginia):

(a) Document entitled "Appendix Part 1 Plain Mirror Customers 1953", showing 1953 dollar sales to furniture manufacturers.

(b) Document entitled "Appendix Part 1 Plain Mirror Customers 1954", showing 1954 dollar sales to furniture manufacturers.

(c) Document entitled "Appendix Part 1 Plain Mirror Customers 1955", showing 1955 dollar sales to furniture manufacturers.

**Government's Exhibit 51.**

**Stroupe Mirror Announcement of 78% Discount Off 1950  
List Dated 30 October 1954.**

**STROUPE MIRROR COMPANY  
Mirrors • Unframed • Framed • Venetian  
THOMASVILLE, NORTH CAROLINA**

**October 30, 1954**

**TO THE TRADE:**

Effective today we find it necessary to withdraw prices on polished plate glass mirrors and quote on plain mirrors 78% off the April 1, 1950 list. At the present time no change will be made from our June 1, 1954, prices for edgework or beveling.

This change has been made necessary because of continued rising costs of labor and materials.

Orders on hand today will be billed at previous prices, with new orders being accepted at price prevailing at date of acceptance.

**Yours very truly,**

**STROUPE MIRROR COMPANY**

## Government's Exhibit 55.

**Schedule Submitted to Grand Jury Pursuant to Subpoena Listing PPG Mirror Customers and Sales of Plain and Fabricated Mirrors to These Customers for Years 1954 (Plain Mirrors, \$126,712.97; Fabricated Mirrors, \$112,855.42; Total, \$239,568.39); 1955 (Plain Mirrors, \$164,172.54; Fabricated Mirrors, \$28,516.24; Total, \$192,688.78), 1956 (Plain Mirrors, \$149,060.17; Fabricated Mirrors, \$11,261.95; Total, \$160,322.12) (11 Months Only).**

PHP-213  
(Revised)

### PPG HIGH POINT WAREHOUSE FURNITURE MANUFACTURER CUSTOMERS

1954

Caro-Craft, Inc.  
Greer Furniture Co.  
B. F. Huntley Furniture Co.  
Jordan Furniture Co.  
Kemp Furniture Specialty Co.  
Mullins Lumber Co.  
Sandhill Furniture Corp.  
Sanford Furniture Co.  
White Furniture Co.

Total dollar sales of plain mirrors to above customers .....	\$126,712.97
Total dollar sales of fabricated (unframed) mirrors to above customers .....	112,855.42
Grand Total	\$239,568.39

*Government's Exhibit 55.*

PHP-217  
(Revised)

PPG HIGH POINT WAREHOUSE  
FURNITURE MANUFACTURER CUSTOMERS

1955

Caro-Craft, Inc.  
Carysbrook Reproductions Furniture Co.  
Craftique, Inc.  
B. F. Huntley Furniture Co.  
Jordan Furniture Co.  
Kemp Furniture Specialty Co.  
Mullins Lumber Co.  
Pinecroft Industries, Inc.  
Sandhill Furniture Corp.  
Sanford Furniture Co.  
White Furniture Co.

Total dollar sales of plain mirrors to above  
customers

\$164,172.54

Total dollar sales of fabricated (unframed)  
mirrors to the above customers

28,516.24

Grand Total

\$192,688.78

*Government's Exhibit 55.*

**PHP-221**  
**(Revised)**

**PPG HIGH POINT WAREHOUSE**  
**FURNITURE MANUFACTURER CUSTOMERS**

**1956\***

Bonaventure Accessories, Inc.

Caro-Craft, Inc.

Craftique, Inc.

Greer Furniture Co.

Jordan Furniture Co.

Kemp Furniture Specialty Co.

Mullins Lumber Co.

Sandhill Furniture Corp.

Sanford Furniture Co.

White Furniture Co.

• • • • •  
 Total dollar sales of plain mirrors to the above  
 customers ..... \$149,060.17

Total dollar sales of fabricated (unframed)  
 mirrors to the above customers..... 11,261.95

Grand Total ..... \$160,322.12

\* Eleven months only



**Government's Exhibit 56.**

**PPG High Point Announcement of 78% Discount Off 1950  
List Dated and Effective 1 November 1954  
(Huntley Furniture).**

November 1, 1954

**B. F. Huntley Furniture Company  
Winston-Salem, N. C.**

**Gentlemen:**

Effective this date we withdraw previous prices on Plate Glass Mirrors, and quote on Plain Polished Plate Glass Mirrors a discount of 78% from List Price dated April 1st, 1950—F. O. B. your plant—2%, 30 days, net 60.

At the present no change will be made from our present prices for Edgework or Beveling.

All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance.

Yours very truly,

**PITTSBURGH PLATE GLASS COMPANY**

**R 17 150**

**129 1261**

**Government's Exhibit 57.**

**PPG High Point Announcement of 78% Discount Off 1950  
List Dated and Effective 1 November 1954  
(Sandhill Furniture).**

**November 1, 1954.**

**Sandhill Furniture Corporation  
West End, N. C.**

**Gentlemen:**

Effective this date we withdraw previous prices on Plate Glass Mirrors, and quote on Plain Polished Plate Glass Mirrors a discount of 78% from List Price dated April 1st, 1950—F.O.B. your plant—2%, 30 days, net 60.

At the present no change will be made from our present prices for Edgework or Beveling.

All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance.

**Yours very truly,**

**PITTSBURGH PLATE GLASS COMPANY**

**R 17 151**

**129 1262**

**Government's Exhibit 60.**

**PPG High Point Announcement of 78% Discount Off 1950  
List Dated and Effective 1 November 1954  
(Mullins Lumber).**

November 1, 1954.

Mullins Lumber Company  
Mullins, South Carolina

Gentlemen:

Effective this date we withdraw previous prices on Plate Glass Mirrors, and quote on Plain Polished Plate Glass Mirrors a discount of 78% from List Price dated April 1st, 1950; F. O. B. your plant, 2% 30-days, net 60.

At the present no change will be made from our present prices for Edgework or Beveling.

All orders on hand will be invoiced at previous prices. New orders will be accepted at prices prevailing at date of acceptance.

Yours very truly,

PITTSBURGH PLATE GLASS COMPANY

R 17 880

6-8 ■  
10-12 ■  
14-16 ■  
18-20 ■  
22-24 ■  
26-28 ■  
30-32 ■  
34-36 ■  
38-40 ■  
42-44 ■  
46-48 ■  
50-52 ■  
54-56 ■  
58-60 ■  
62-64 ■  
66-68 ■  
70-72 ■  
74-76 ■  
78-80 ■  
82-84 ■  
86-88 ■  
90-92 ■  
94-96 ■

WIDTH 6 INCHES				WIDTH 8 INCHES			
Length	List	Length	List	Length	List	Length	List
6	1.05	52	8.70	8	1.85	54	13.50
8	1.40	54	9.05	10	2.25	56	14.00
10	1.70	56	9.40	12	2.60	58	14.50
12	2.00	58	9.70	14	3.00	60	15.00
14	2.30	60	10.05	16	3.35	62	15.50
16	2.60	62	10.40	18	3.65	64	16.00
18	2.90	64	10.70	20	4.20	66	16.50
20	3.15	66	13.05	22	4.60	68	17.00
22	3.40	68	13.45	24	5.05	70	17.50
24	3.65	70	13.80	26	5.45	72	18.00
26	4.10	72	14.20	28	5.70	74	18.50
28	4.40	74	14.60	30	6.10	76	19.00
30	4.70	76	15.00	32	6.50	78	19.50
32	5.05	78	15.40	34	6.90	80	20.00
34	5.35	80	15.80	36	7.30	82	20.50
36	5.65	82	16.20	38	8.00	84	21.00
38	6.15	84	16.60	40	8.40	86	21.50
40	6.50	86	17.00	42	8.80	88	22.00
42	6.80	88	17.40	44	9.25	90	22.50
44	7.15	90	17.75	46	9.65	92	23.90
46	7.45	92	18.15	48	10.10	94	24.45
48	7.80	94	18.55	50	12.50	96	24.95
50	8.35	96	18.95	52	13.00		

6-8 ■

10-12 ■

WIDTH 10 INCHES				WIDTH 12 INCHES			
Length	List	Length	List	Length	List	Length	List
10	2.70	54	15.95	12	3.80	56	18.75
12	3.15	56	16.55	14	4.40	58	19.45
14	3.55	58	17.15	16	5.05	60	21.30
16	4.20	60	17.75	18	5.65	62	22.00
18	4.70	62	18.35	20	6.10	64	22.70
20	5.25	64	18.95	22	6.70	66	23.45
22	5.60	66	19.50	24	7.30	68	24.15
24	6.10	68	20.10	26	7.80	70	24.85
26	6.60	70	20.70	28	8.40	72	25.55
28	7.10	72	21.30	30	9.00	74	26.25
30	7.50	74	23.10	32	9.60	76	27.00
32	8.00	76	23.75	34	11.40	78	27.70
34	8.50	78	24.35	36	12.05	80	28.40
36	9.00	80	25.00	38	12.75	82	29.10
38	9.50	82	25.60	40	13.40	84	29.80
40	11.85	84	26.25	42	14.05	86	32.70
42	12.40	86	26.85	44	14.75	88	33.45
44	13.00	88	27.50	46	15.40	90	34.20
46	13.60	90	28.10	48	16.10	92	34.95
48	14.20	92	28.75	50	16.75	94	35.70
50	14.80	94	29.35	52	17.40	96	36.50
52	15.40	96	30.00	54	18.10		



## Government's Exhibit 61.

14-16 ■

## WIDTH 14 INCHES

Length	List	Length	List
14	5.15	68	27.35
16	5.70	70	28.15
18	6.40	72	29.00
20	7.10	74	31.95
22	7.70	76	32.80
24	8.40	78	33.65
26	9.10	80	34.55
28	10.95	82	35.40
30	11.70	84	36.25
32	12.50	86	37.10
34	13.30	88	38.00
36	14.05	90	38.85
38	14.85	92	39.70
40	15.65	94	40.60
42	16.40	96	41.45
44	17.20	98	42.30
46	18.00	100	43.15
48	18.75	102	44.05
50	19.55	104	47.95
52	20.95	106	48.85
54	21.75	108	49.75
56	22.55	110	50.70
58	23.35	112	51.60
60	24.15	114	52.55
62	24.95	116	53.45
64	25.75	118	54.40
66	26.55	120	55.30

## WIDTH 16 INCHES

Length	List	Length	List
16	6.50	70	33.60
18	7.30	72	34.55
20	8.00	74	35.50
22	8.80	76	36.50
24	9.60	78	37.45
26	11.60	80	38.40
28	12.50	82	39.35
30	13.40	84	40.30
32	14.30	86	41.30
34	15.20	88	42.25
36	16.10	90	43.20
38	16.95	92	48.45
40	17.85	94	49.50
42	18.75	96	50.55
44	19.65	98	51.60
46	21.15	100	52.65
48	22.10	102	53.70
50	23.00	104	54.75
52	23.90	106	55.85
54	24.85	108	56.90
56	25.75	110	57.95
58	26.70	112	59.00
60	27.60	114	60.05
62	28.50	116	61.10
64	30.70	118	62.15
66	31.70	120	63.20
68	32.65		



## Government's Exhibit 61.

## WIDTH 18 INCHES

Length	List	Length	List
18	8.10	70	37.80
20	9.00	72	38.90
22	11.05	74	39.95
24	12.05	76	41.05
26	13.05	78	42.10
28	14.05	80	43.20
30	15.05	82	48.60
32	16.10	84	49.75
34	17.10	86	50.95
36	18.10	88	52.15
38	19.10	90	53.30
40	20.10	92	54.50
42	21.75	94	55.70
44	22.75	96	56.90
46	23.80	98	58.05
48	24.85	100	59.25
50	25.85	102	60.45
52	26.90	104	61.60
54	27.95	106	62.80
56	29.00	108	64.00
58	31.30	110	65.15
60	32.40	112	66.35
62	33.50	114	67.55
64	34.55	116	68.75
66	35.65	118	69.90
68	36.70	120	71.10

## WIDTH 20 INCHES

Length	List	Length	List
20	11.15	78	51.35
22	12.30	80	52.65
24	13.40	82	54.00
26	14.50	84	55.30
28	15.65	86	57.35
30	16.75	88	58.65
32	17.85	90	60.00
34	19.00	92	61.35
36	20.10	94	62.65
38	21.85	96	64.00
40	23.00	98	65.35
42	24.15	100	66.65
44	25.30	102	68.00
46	26.45	104	69.35
48	27.60	106	70.65
50	28.75	108	72.00
52	31.20	110	76.10
54	32.40	112	77.45
56	33.60	114	78.85
58	34.80	116	80.25
60	36.00	118	81.60
62	37.20	120	83.00
64	38.40	122	84.40
66	39.60	124	85.75
68	40.80	126	87.15
70	42.00	128	88.55
72	43.20	130	89.90
74	48.70	132	91.30
76	50.05		

18-20

## Government's Exhibit 61.

## WIDTH 22 INCHES

Length	List	Length	List
22	13.50	78	55.75
24	14.75	80	57.20
26	15.95	82	58.65
28	17.20	84	60.05
30	18.40	86	61.50
32	19.65	88	62.90
34	21.50	90	64.35
36	22.75	92	65.80
38	24.05	94	67.20
40	25.30	96	68.65
42	26.55	98	70.05
44	27.85	100	76.10
46	30.35	102	77.60
48	31.70	104	79.15
50	33.00	106	80.65
52	34.30	108	82.15
54	35.65	110	83.70
56	36.95	112	85.20
58	38.30	114	86.75
60	39.60	116	88.25
62	40.90	118	89.80
64	42.25	120	91.30
66	47.20	122	92.80
68	48.60	124	94.35
70	50.05	126	95.85
72	51.50	128	97.40
74	52.90	130	98.90
76	54.35	132	100.45

## WIDTH 24 INCHES

Length	List	Length	List
24	16.10	80	62.40
26	17.40	82	63.95
28	18.75	84	65.50
30	20.10	86	67.10
32	22.10	88	68.65
34	23.45	90	70.20
36	24.85	92	75.45
38	26.20	94	77.10
40	27.60	96	78.70
42	29.00	98	80.35
44	31.70	100	82.00
46	33.10	102	83.65
48	34.55	104	85.30
50	36.00	106	86.90
52	37.45	108	88.55
54	38.90	110	90.20
56	40.30	112	91.85
58	41.75	114	94.60
60	43.20	116	96.30
62	48.35	118	97.95
64	49.90	120	99.60
66	51.50	122	101.25
68	53.05	124	102.90
70	54.60	126	104.60
72	56.15	128	106.25
74	57.70	130	107.90
76	59.30	132	109.55
78	60.85		

22-2

*Government's Exhibit 61.***WIDTH 26 INCHES**

Length	List	Length	List
26	18.85	90	79.95
28	20.95	92	81.75
30	22.40	94	83.50
32	23.90	96	85.30
34	25.40	98	87.05
36	26.90	100	88.85
38	28.40	102	90.60
40	31.20	104	92.40
42	32.75	106	94.15
44	34.30	108	95.95
46	35.90	110	97.70
48	37.45	112	99.50
50	39.00	114	102.50
52	40.55	116	104.30
54	42.10	118	106.10
56	47.30	120	107.90
58	49.00	122	109.70
60	50.70	124	111.50
62	52.40	126	113.30
64	54.10	128	115.10
66	55.75	130	116.90
68	57.45	132	118.70
70	59.15	134	120.50
72	60.85	136	122.30
74	62.55	138	124.10
76	64.20	140	135.00
78	65.90	142	136.90
80	67.60	144	138.85
82	69.30	146	140.75
84	74.60	148	142.70
86	76.40	150	144.60
88	78.15		

**WIDTH 28 INCHES**

Length	List	Length	List
28	22.55	90	85.05
30	24.15	92	86.95
32	25.75	94	88.85
34	27.35	96	90.70
36	29.00	98	92.60
38	31.90	100	94.50
40	33.60	102	96.40
42	35.30	104	98.30
44	36.95	106	100.15
46	38.65	108	102.05
48	40.30	110	103.95
50	42.00	112	105.85
52	47.30	114	109.05
54	49.15	116	110.95
56	50.95	118	112.90
58	52.80	120	114.80
60	54.60	122	116.70
62	56.40	124	118.65
64	58.25	126	120.55
66	60.05	128	122.45
68	61.90	130	135.00
70	63.70	132	137.05
72	65.50	134	139.15
74	67.35	136	141.20
76	69.15	138	143.30
78	72.80	140	145.35
80	74.65	142	147.45
82	76.55	144	149.50
84	78.40	146	151.60
86	81.25	148	153.65
88	83.15	150	155.75

26-28

*Government's Exhibit 61.***WIDTH 30 INCHES**

Length	List	Length	List
30	25.85	92	92.00
32	27.60	94	94.00
34	30.60	96	96.00
36	32.40	98	98.00
38	34.20	100	100.00
40	36.00	102	102.00
42	37.80	104	104.00
44	39.60	106	106.00
46	41.40	108	108.00
48	43.20	110	110.00
50	48.75	112	112.00
52	50.70	114	114.00
54	52.65	116	116.00
56	54.60	118	118.00
58	56.55	120	120.00
60	58.50	122	135.70
62	60.45	124	137.95
64	62.40	126	140.15
66	64.35	128	142.40
68	66.30	130	144.60
70	68.25	132	146.85
72	70.20	134	149.05
74	74.00	136	151.30
76	76.00	138	153.50
78	78.00	140	155.75
80	80.00	142	157.95
82	82.00	144	160.20
84	84.00	146	162.40
86	86.00	148	164.65
88	88.00	150	166.85
90	90.00		

**WIDTH 32 INCHES**

Length	List	Length	List
32	30.70	92	98.15
34	32.65	94	100.25
36	34.55	96	102.40
38	36.50	98	104.55
40	38.40	100	106.65
42	40.30	102	108.80
44	42.25	104	110.95
46	47.85	106	113.05
48	49.90	108	115.20
50	52.00	110	117.35
52	54.10	112	119.45
54	56.15	114	135.30
56	58.25	116	137.65
58	60.30	118	140.05
60	62.40	120	142.40
62	64.50	122	144.75
64	66.55	124	147.15
66	68.65	126	149.50
68	72.55	128	151.90
70	74.65	130	154.25
72	76.80	132	156.65
74	78.95	134	159.00
76	81.05	136	161.40
78	83.20	138	163.75
80	85.35	140	166.15
82	87.45	142	168.50
84	89.60	144	170.90
86	91.75	146	173.25
88	93.85	148	175.65
90	96.00	150	178.00

30-32



*Government's Exhibit 61.***WIDTH 34 INCHES**

Length	List	Length	List
34	34.70	94	106.55
36	36.70	96	108.80
38	38.75	98	111.05
40	40.80	100	113.35
42	42.85	102	115.60
44	48.60	104	117.85
46	50.85	106	133.65
48	53.05	108	136.15
50	55.25	110	138.70
52	57.45	112	141.20
54	59.65	114	143.75
56	61.90	116	146.25
58	64.10	118	148.80
60	66.30	120	151.30
62	68.50	122	153.80
64	72.55	124	156.35
66	74.80	126	158.85
68	77.05	128	161.40
70	79.35	130	163.90
72	81.60	132	166.45
74	83.85	134	168.95
76	86.15	136	171.45
78	88.40	138	174.00
80	90.65	140	176.50
82	92.95	142	179.05
84	95.20	144	181.55
86	97.45	146	184.10
88	99.75	148	186.60
90	102.00	150	189.10
92	104.25		

**WIDTH 36 INCHES**

Length	List	Length	List
36	38.90	94	112.80
38	41.05	96	115.20
40	43.20	98	117.60
42	49.15	100	120.00
44	51.50	102	136.15
46	53.80	104	138.85
48	56.15	106	141.50
50	58.50	108	144.20
52	60.85	110	146.85
54	63.20	112	149.50
56	65.50	114	152.20
58	67.85	116	154.85
60	70.20	118	157.55
62	74.40	120	160.20
64	76.80	122	162.85
66	79.20	124	165.55
68	81.60	126	168.20
70	84.00	128	170.90
72	86.40	130	173.55
74	88.80	132	176.20
76	91.20	134	178.90
78	93.60	136	181.55
80	96.00	138	184.25
82	98.40	140	186.90
84	100.80	142	189.55
86	103.20	144	192.25
88	105.60	146	194.90
90	108.00	148	197.60
92	110.40	150	200.25

34-36



*Government's Exhibit 61.***WIDTH 38 INCHES**

Length	List	Length	List
38	46.95	96	135.30
40	49.40	98	138.10
42	51.85	100	140.90
44	54.35	102	143.75
46	56.80	104	146.55
48	59.30	106	149.35
50	61.75	108	152.20
52	64.20	110	155.00
54	66.70	112	157.85
56	69.15	114	160.65
58	73.45	116	163.45
60	76.00	118	166.30
62	78.55	120	169.10
64	81.05	122	171.90
66	83.60	124	174.75
68	86.15	126	177.55
70	88.65	128	180.35
72	91.20	130	183.20
74	93.75	132	186.00
76	96.25	134	188.85
78	98.80	136	191.65
80	101.35	138	194.45
82	103.85	140	197.30
84	106.40	142	200.10
86	108.95	144	202.90
88	111.45	146	205.75
90	114.00	148	208.55
92	116.55	150	211.35
94	119.05		

**WIDTH 40 INCHES**

Length	List	Length	List
40	52.00	96	142.40
42	54.60	98	145.35
44	57.20	100	148.35
46	59.80	102	151.30
48	62.40	104	154.25
50	65.00	106	157.25
52	67.00	108	160.20
54	70.20	110	163.15
56	74.65	112	166.15
58	77.35	114	169.10
60	80.00	116	172.05
62	82.65	118	175.05
64	85.35	120	178.00
66	88.00	122	180.95
68	90.65	124	183.95
70	93.35	126	186.90
72	96.00	128	189.85
74	98.65	130	192.85
76	101.35	132	195.80
78	104.00	134	198.75
80	106.65	136	201.75
82	109.35	138	204.70
84	112.00	140	207.65
86	114.65	142	210.65
88	117.35	144	213.60
90	120.00	146	216.55
92	136.45	148	219.55
94	139.45	150	222.50

38-4

*Government's Exhibit 61.***WIDTH 42 INCHES**

Length	List	Length	List
42	57.35	98	152.65
44	60.05	100	155.75
46	62.80	102	158.85
48	65.50	104	162.00
50	68.25	106	165.10
52	72.80	108	168.20
54	75.60	110	171.30
56	78.40	112	174.45
58	81.20	114	177.55
60	84.00	116	180.65
62	86.80	118	183.80
64	89.60	120	186.90
66	92.40	122	190.00
68	95.20	124	193.15
70	98.00	126	196.25
72	100.80	128	199.35
74	103.60	130	202.45
76	106.40	132	205.60
78	109.20	134	208.70
80	112.00	136	211.80
82	114.80	138	214.95
84	117.60	140	218.05
86	133.95	142	221.15
88	137.05	144	224.30
90	140.15	146	227.40
92	143.30	148	230.50
94	146.40	150	233.60
96	149.50		

**WIDTH 44 INCHES**

Length	List	Length	List
44	62.90	98	159.90
46	65.80	100	163.15
48	68.65	102	166.45
52	76.25	106	172.95
54	79.20	108	176.20
56	82.15	110	179.50
58	85.05	112	182.75
60	88.00	114	186.00
50	73.35	104	169.70
62	90.95	116	189.25
64	93.85	118	192.55
66	96.80	120	195.80
68	99.75	122	199.05
70	102.65	124	202.35
72	105.60	126	205.60
74	108.55	128	208.85
76	111.45	130	212.10
78	114.40	132	215.40
80	117.35	134	218.65
82	133.80	136	221.90
84	137.05	138	225.15
86	140.30	140	228.45
88	143.60	142	231.70
90	146.85	144	234.95
92	150.10	146	238.20
94	153.40	148	241.50
96	156.65	150	244.75

42-44

*Government's Exhibit 61.***WIDTH 46 INCHES**

Length	List	Length	List
46	68.75	100	170.60
48	73.60	102	174.00
50	76.65	104	177.40
52	79.75	106	180.80
54	82.80	108	184.25
56	85.85	110	187.65
58	88.95	112	191.05
60	92.00	114	194.45
62	95.05	116	197.90
64	98.15	118	201.30
66	101.20	120	204.70
68	104.25	122	208.10
70	107.35	124	211.50
72	110.40	126	214.95
74	113.45	128	218.35
76	116.55	130	221.75
78	119.60	132	225.15
80	136.45	134	228.60
82	139.90	136	232.00
84	143.30	138	235.40
86	146.70	140	238.80
88	150.10	142	242.25
90	153.50	144	245.65
92	156.95	146	249.05
94	160.35	148	252.45
96	163.75	150	255.85
98	167.15		

**WIDTH 48 INCHES**

Length	List	Length	List
48	76.80	100	178.00
50	80.00	102	181.55
52	83.20	104	185.10
54	86.40	106	188.70
56	89.60	108	192.25
58	92.80	110	195.80
60	96.00	112	199.35
62	99.20	114	202.90
64	102.40	116	206.50
66	105.60	118	210.05
68	108.80	120	213.60
70	112.00	122	217.15
72	115.20	124	220.70
74	118.40	126	224.30
76	135.30	128	227.85
78	138.85	130	231.40
80	142.40	132	234.95
82	145.95	134	238.50
84	149.50	136	242.10
86	153.10	138	245.65
88	156.65	140	249.20
90	160.20	142	252.75
92	163.75	144	256.30
94	167.30	146	259.90
96	170.90	148	263.45
98	174.45	150	267.00

*Government's Exhibit 61.***WIDTH 30 INCHES**

Length	List	Length	List
50	83.95	102	189.10
52	86.65	104	192.85
54	90.00	106	196.55
56	93.35	108	200.25
58	96.65	110	203.95
60	100.00	112	207.65
62	103.35	114	211.35
64	106.65	116	215.10
66	110.00	118	218.80
68	113.35	120	222.50
70	116.65	122	226.20
72	120.00	124	229.90
74	137.20	126	233.60
76	140.90	128	237.35
78	144.60	130	241.05
80	148.35	132	244.75
82	152.05	134	248.45
84	155.75	136	252.15
86	159.45	138	255.85
88	163.15	140	259.60
90	166.85	142	263.30
92	170.60	144	267.00
94	174.30	146	298.10
96	178.00	148	302.15
98	181.70	150	306.25
100	185.40		

**WIDTH 52 INCHES**

Length	List	Length	List
52	90.15	102	196.70
54	93.60	104	200.55
56	97.05	106	204.40
58	100.55	108	208.25
60	104.00	110	212.10
62	107.45	112	215.95
64	110.95	114	219.85
66	114.40	116	223.70
68	117.85	118	227.55
70	135.00	120	231.40
72	138.85	122	235.25
74	142.70	124	239.10
76	146.55	126	242.95
78	150.40	128	246.85
80	154.25	130	250.70
82	158.10	132	254.55
84	162.00	134	258.40
86	165.85	136	262.25
88	169.70	138	266.10
90	173.55	140	297.25
92	177.40	142	301.50
94	181.25	144	305.75
96	185.10	146	310.00
98	189.00	148	314.25
100	192.85	150	318.50

50-52

*Government's Exhibit 61.***WIDTH 54 INCHES**

Length	List	Length	List
54	97.20	104	208.25
56	100.80	106	212.25
58	104.40	108	216.25
60	108.00	110	220.25
62	111.60	112	224.30
64	115.20	114	228.30
66	118.80	116	232.30
68	136.15	118	236.30
70	140.15	120	240.30
72	144.20	122	244.30
74	148.20	124	248.30
76	152.20	126	252.30
78	156.20	128	256.30
80	160.20	130	260.30
82	164.20	132	264.35
84	168.20	134	295.45
86	172.20	136	299.90
88	176.20	138	304.30
90	180.20	140	308.70
92	184.25	142	313.10
94	188.25	144	317.50
96	192.25	146	321.95
98	196.25	148	326.35
100	200.25	150	330.75
102	204.25		

**WIDTH 56 INCHES**

Length	List	Length	List
56	104.55	104	215.95
58	108.25	106	220.15
60	112.00	108	224.30
62	115.75	110	228.45
64	119.45	112	232.60
66	137.05	114	236.75
68	141.20	116	240.90
70	145.35	118	245.05
72	149.50	120	249.20
74	153.65	122	253.35
76	157.85	124	257.50
78	162.00	126	261.65
80	166.15	128	265.80
82	170.30	130	297.25
84	174.45	132	301.85
86	178.60	134	306.40
88	182.75	136	311.00
90	186.90	138	315.55
92	191.05	140	320.15
94	195.20	142	324.70
96	199.35	144	329.30
98	203.50	146	333.85
100	207.65	148	338.45
102	211.80	150	343.00



*Government's Exhibit 61.***WIDTH 58 INCHES**

Length	List	Length	List
58	112.15	106	228.00
60	113.00	108	232.30
62	119.85	110	236.60
64	137.65	112	240.90
66	141.95	114	245.20
68	146.25	116	249.50
70	150.55	118	253.80
72	154.85	120	258.10
74	159.15	122	262.40
76	163.45	124	266.70
78	167.75	126	298.40
80	172.05	128	303.15
82	176.35	130	307.90
84	180.65	132	312.60
86	184.95	134	317.35
88	189.25	136	322.10
90	193.55	138	326.85
92	197.90	140	331.55
94	202.20	142	336.30
96	206.50	144	341.05
98	210.80	146	345.80
100	215.10	148	350.50
102	219.40	150	355.25
104	223.70		

**WIDTH 60 INCHES**

Length	List	Length	List
60	120.00	106	235.85
62	137.95	108	240.30
64	142.40	110	244.75
66	146.85	112	249.20
68	151.30	114	253.65
70	155.75	116	258.10
72	160.20	118	262.55
74	164.65	120	267.00
76	169.10	122	298.90
78	173.55	124	303.80
80	178.00	126	308.70
82	182.45	128	313.60
84	186.90	130	318.50
86	191.35	132	323.40
88	195.80	134	328.30
90	200.25	136	333.20
92	204.70	138	338.10
94	209.15	140	343.00
96	213.60	142	347.90
98	218.05	144	352.80
100	222.50	146	357.70
102	226.95	148	362.60
104	231.40	150	367.50

58-60

*Government's Exhibit 61.***WIDTH 62 INCHES**

Length	List	Length	List
62	142.55	108	248.30
64	147.15	110	252.90
66	151.75	112	257.50
68	156.35	114	262.10
70	160.95	116	266.70
72	165.55	118	298.75
74	170.15	120	303.80
76	174.75	122	308.85
78	179.35	124	313.95
80	183.95	126	319.00
82	188.55	128	324.05
84	193.15	130	329.10
86	197.75	132	334.20
88	202.35	134	339.25
90	206.90	136	344.30
92	211.50	138	349.35
94	216.10	140	354.45
96	220.70	142	359.50
98	225.30	144	364.55
100	229.90	146	369.60
102	234.50	148	374.70
104	239.10	150	379.75
106	243.70		

**WIDTH 64 INCHES**

Length	List	Length	List
64	151.90	108	256.30
66	156.65	110	261.05
68	161.40	112	265.80
70	166.15	114	297.90
72	170.90	116	303.15
74	175.65	118	308.35
76	180.35	120	313.60
78	185.10	122	318.85
80	189.85	124	324.05
82	194.60	126	329.30
84	199.35	128	334.50
86	204.10	130	339.75
88	208.85	132	344.95
90	213.60	134	350.20
92	218.35	136	355.40
94	223.10	138	360.65
96	227.85	140	365.85
98	232.60	142	371.10
100	237.35	144	376.30
102	242.10	146	381.55
104	246.85	148	386.75
106	251.55	150	392.00

*Government's Exhibit 61.***WIDTH 66 INCHES**

Length	List	Length	List
66	161.55	110	296.45
68	166.45	112	301.85
70	171.30	114	307.25
72	176.20	116	312.60
74	181.10	118	318.00
76	186.00	120	323.40
78	190.90	122	328.80
80	195.80	124	334.20
82	200.70	126	339.55
84	205.60	128	344.95
86	210.50	130	350.35
88	215.40	132	355.75
90	220.25	134	361.15
92	225.15	136	366.50
94	230.05	138	371.90
96	234.95	140	377.30
98	239.85	142	382.70
100	244.75	144	388.10
102	249.65	146	393.45
104	254.55	148	398.85
106	259.45	150	404.25
108	264.35		

**WIDTH 68 INCHES**

Length	List	Length	List
68	171.45	110	305.45
70	176.50	112	311.00
72	181.55	114	316.55
74	186.60	116	322.10
76	191.65	118	327.65
78	196.70	120	333.20
80	201.75	122	338.75
82	206.80	124	344.30
84	211.80	126	349.85
86	216.85	128	355.40
88	221.90	130	360.95
90	226.95	132	366.50
92	232.00	134	372.05
94	237.05	136	377.65
96	242.10	138	383.20
98	247.10	140	388.75
100	252.15	142	394.30
102	257.20	144	399.85
104	262.25	146	405.40
106	267.35	148	410.95
108	269.90	150	416.50

66-68

*Government's Exhibit 61.***WIDTH 70 INCHES**

Length	List	Length	List
70	181.70	112	320.15
72	186.90	114	325.85
74	192.10	116	331.55
76	197.30	118	337.30
78	202.45	120	343.00
80	207.65	122	348.70
82	212.85	124	354.45
84	218.05	126	360.15
86	223.25	128	365.85
88	228.45	130	371.60
90	233.60	132	377.30
92	238.80	134	383.00
94	244.00	136	388.75
96	249.20	138	394.45
98	254.40	140	400.15
100	259.60	142	405.90
102	264.75	144	411.60
104	297.25	146	417.30
106	303.00	148	423.05
108	308.70	150	428.75
110	314.40		

**WIDTH 72 INCHES**

Length	List	Length	List
72	192.25	112	329.30
74	197.60	114	335.15
76	202.90	116	341.05
78	208.25	118	346.90
80	213.60	120	352.80
82	218.95	122	358.70
84	224.30	124	364.55
86	229.60	126	370.45
88	234.95	128	376.30
90	240.30	130	382.20
92	245.65	132	388.10
94	251.00	134	393.95
96	256.30	136	399.85
98	261.65	138	405.70
100	267.00	140	411.60
102	299.90	142	417.50
104	305.75	144	423.35
106	311.65	146	429.25
108	317.50	148	435.10
110	323.40	150	441.00

70-72 ■



*Government's Exhibit 61.***WIDTH 74 INCHES**

Length	List	Length	List
74	203.05	114	344.45
76	208.55	116	350.50
78	214.05	118	356.55
80	219.55	120	362.60
82	225.00	122	368.65
84	230.50	124	374.70
86	236.00	126	380.75
88	241.50	128	386.75
90	246.95	130	392.80
92	252.45	132	398.85
94	257.95	134	404.90
96	263.45	136	410.95
98	296.10	138	417.00
100	302.15	140	423.05
102	308.20	142	429.10
104	314.25	144	435.10
106	320.30	146	522.20
108	326.35	148	529.35
110	332.40	150	536.50
112	338.45		

**WIDTH 76 INCHES**

Length	List	Length	List
76	214.20	114	353.80
78	219.85	116	360.00
80	225.45	118	366.20
82	231.10	120	372.40
84	236.75	122	378.60
86	242.40	124	384.80
88	248.00	126	391.00
90	253.65	128	397.25
92	259.30	130	403.45
94	264.90	132	409.65
96	297.90	134	415.85
98	304.15	136	422.05
100	310.35	138	428.25
102	316.55	140	434.45
104	322.75	142	440.65
106	328.95	144	528.95
108	335.15	146	536.30
110	341.35	148	543.65
112	347.55	150	551.00

74-76



*Government's Exhibit 61.***WIDTH 78 INCHES**

Length	List	Length	List
78	225.60	116	369.45
80	231.40	118	375.85
82	237.20	120	382.20
84	242.95	122	388.55
86	248.75	124	394.95
88	254.55	126	401.30
90	260.30	128	407.70
92	266.10	130	414.05
94	299.40	132	420.40
96	305.75	134	426.80
98	312.15	136	433.15
100	318.50	138	439.55
102	324.85	140	527.80
104	331.25	142	535.35
106	337.60	144	542.90
108	344.00	146	550.40
110	350.35	148	557.95
112	356.70	150	565.50
114	363.10		

**WIDTH 80 INCHES**

Length	List	Length	List
80	237.35	116	378.95
82	243.25	118	385.45
84	249.20	120	392.00
86	255.15	122	398.55
88	261.05	124	405.05
90	267.00	126	411.60
92	300.55	128	418.15
94	307.05	130	424.65
96	313.60	132	431.20
98	320.15	134	437.75
100	326.65	136	525.85
102	333.20	138	533.60
104	339.75	140	541.35
106	346.25	142	549.05
108	352.80	144	556.80
110	359.35	146	564.55
112	365.85	148	572.25
114	372.40	150	580.00

78-80 ■

*Government's Exhibit 61.***WIDTH 82 INCHES**

Length	List	Length	List
82	249.35	118	395.10
84	255.45	120	401.80
86	261.50	122	408.50
88	294.65	124	415.20
90	301.35	126	421.90
92	308.05	128	428.60
94	314.75	130	435.30
96	321.45	132	523.15
98	328.15	134	531.10
100	334.85	136	539.00
102	341.55	138	546.95
104	348.25	140	554.85
106	354.90	142	562.80
108	361.60	144	570.70
110	368.30	146	578.65
112	375.00	148	586.55
114	381.70	150	594.50
116	388.40		

**WIDTH 84 INCHES**

Length	List	Length	List.
84	261.65	118	404.75
86	295.00	120	411.60
88	301.85	122	418.45
90	308.70	124	425.30
92	315.55	126	432.20
94	322.40	128	439.05
96	329.30	130	527.80
98	336.15	132	535.90
100	343.00	134	544.05
102	349.85	136	552.15
104	356.70	138	560.30
106	363.60	140	568.40
108	370.45	142	576.50
110	377.30	144	584.65
112	384.15	146	592.75
114	391.00	148	600.90
116	397.90	150	609.00

*Government's Exhibit 61.***WIDTH 86 INCHES**

Length	List	Length	List
86	302.00	120	421.40
88	309.05	122	428.40
90	316.05	124	435.45
92	323.05	126	596.00
94	330.10	128	605.45
96	337.10	130	614.90
98	344.15	132	624.35
100	351.15	134	633.80
102	358.20	136	643.30
104	365.20	138	652.75
106	372.25	140	662.20
108	379.25	142	671.65
110	386.30	144	681.10
112	393.30	146	690.60
114	400.35	148	700.05
116	407.35	150	709.50
118	414.40		

**WIDTH 88 INCHES**

Length	List	Length	List
88	316.20	120	431.20
90	323.40	122	438.40
92	330.60	124	600.15
94	337.75	126	609.85
96	344.95	128	619.50
98	352.15	130	629.20
100	359.35	132	638.90
102	366.50	134	648.55
104	373.70	136	658.25
106	380.90	138	667.90
108	388.10	140	677.60
110	395.25	142	687.30
112	402.45	144	696.95
114	409.65	146	706.65
116	416.85	148	716.30
118	424.00	150	726.00

*Government's Exhibit 61.***WIDTH 90 INCHES**

Length	List	Length	List
90	330.75	122	603.90
92	338.10	124	613.80
94	345.45	126	623.70
96	352.80	128	633.60
98	360.15	130	643.50
100	367.50	132	653.40
102	374.85	134	663.30
104	382.20	136	673.20
106	389.55	138	683.10
108	396.90	140	693.00
110	404.25	142	702.90
112	411.60	144	712.80
114	418.95	146	722.70
116	426.30	148	732.60
118	433.65	150	742.50
120	441.00		

**WIDTH 92 INCHES**

Length	List	Length	List
92	345.60	122	617.30
94	353.15	124	627.45
96	360.65	126	637.55
98	368.15	128	647.70
100	375.65	130	657.80
102	383.20	132	667.90
104	390.70	134	678.05
106	398.20	136	688.15
108	405.70	138	698.30
110	413.25	140	708.40
112	420.75	142	718.50
114	428.25	144	728.65
116	435.75	146	738.75
118	597.10	148	748.90
120	607.20	150	759.00

*Government's Exhibit 61.***WIDTH 94 INCHES**

Length	List	Length	List
94	360.80	124	641.10
96	368.50	126	651.40
98	376.15	128	661.75
100	383.85	130	672.10
102	391.50	132	682.45
104	399.20	134	692.80
106	406.85	136	703.10
108	414.55	138	713.45
110	422.20	140	723.80
112	429.90	142	734.15
114	437.55	144	744.50
116	599.70	146	754.80
118	610.05	148	765.15
120	620.40	150	775.50
122	630.75		

**WIDTH 96 INCHES**

Length	List	Length	List
96	376.30	124	654.70
98	384.15	126	665.30
100	392.00	128	675.85
102	399.85	130	686.40
104	407.70	132	696.95
106	415.50	134	707.50
108	423.35	136	718.10
110	431.20	138	728.65
112	439.05	140	739.20
114	601.90	142	749.75
116	612.50	144	760.30
118	623.05	146	770.90
120	633.60	148	781.45
122	644.15	150	792.00



**Government's Exhibit 62.**

**PPG High Point Announcement of 80% Discount Off 1950  
List Dated 10 May 1954, Effective 1 June 1954.**

**May 10, 1954**

**PRICE CHANGE ON MIRRORS, EFFECTIVE JUNE 1, 1954, AS  
FOLLOWS:**

Plain Mirrors.....	80% off April 1, 1950 list.
Polished Edges.....	1/2¢ per lineal inch.
1/2" Bevel & Pol. edges.....	1¢ per lineal inch.
3/4" Bevel & Pol. edges.....	1 1/2¢ per lineal inch.
1" Bevel & Pol. edges.....	2¢ per lineal inch.

**F.O.B. your factory — Terms 2% 30 Days, net 60.**

**P I T T S B U R G H  
P L A T E G L A S S C O M P A N Y**

**R 17 119**

**129 1235**

### Government's Exhibit 63.

Quotation of 77% for Polished Plate Glass Mirrors to  
Morrison Furniture and Fixture Company Dated  
December 3, 1946, and 1 July 1955.

MORRISON FURN. & FIXTURE Co.,  
Statesville, N. C.

			7/1/55
Polished Plate Glass.....	60%	80%	78%
Polished Plate Glass Mirrors.....	80%	78%	77%
???		60%	
Window Glass .....	64%	??	83%
Polishing Edges.....		1¢ per inch.	
Gr      ???		?	
Singer Pulls.....		Each 50¢	
Mitering Edges.....		2¢ per inch.	
Holes.....		15¢ each.	
Sandblasting or Ground Surface		30¢ per sq. ft.	
Beveling to 1".....		1½¢ per inch.	
Heavy Sheet.....		Schedule.	
???			
7/16" Heavy Mirror Glass.....		1.00 sq. ft.	
???			
7/32" Heavy Sheet.....		50¢ sq. ft.	
???	7/32"	.47 sq. ft.	

**Government's Exhibit 64.**

**MMA Program for Annual Meeting at Grove Park Inn,  
Asheville, North Carolina.**

**Mirror**

**Manufacturers  
Association**

**1954 ANNUAL MEETING**

**AND**

**EXHIBIT**

**GROVE PARK INN**

**Asheville, North Carolina**

**Sunday**

**Monday**

**Tuesday**

**Wednesday**

**October**

**24, 25, 26, 27**

**1954**

*Government's Exhibit 64.*

HEADQUARTERS.....CAROLINA ROOM  
 REGISTRATION.....LOBBY NEAR CLOCK  
 LADIES HEADQUARTERS.....ROOM 269  
 EXHIBITS.....GREEN ROOM

## SUNDAY, OCTOBER 24, 1954

6:30 P.M.

COCKTAIL PARTY FOR EARLY  
 BIRDS.....GROTTO ROOM  
 Twenty-three years of MMA in pictures.

## MONDAY, OCTOBER 25, 1954

## COMMITTEE MEETING DAY

8:00 A.M. - 10:00 A.M. Industry Committee Breakfast.....To be bulletined  
 9:00 A.M. - 8:00 P.M. Registration.....Lobby near Clock  
 9:00 A.M. - 9:00 P.M. EXHIBITS OPEN.....Green Room  
 10:00 A.M. - 12:00 Noon Mirror Information Committee.....Room 269  
 Trade Practices and Standards  
 Committee .....To be bulletined  
 Membership Committee .....To be bulletined  
 10:00 A.M. - 2:00 P.M. Market Development  
 Committee .....East Dining Room  
 (Luncheon served)  
 12:00 Noon - 2:00 P.M. Cost Manual Committee  
 Luncheon .....To be bulletined  
 Inspection and Resilvering Committee  
 Luncheon .....To be bulletined  
 Packaging and Traffic Committee  
 Luncheon .....Room 269  
 2:00 P.M. - 8:00 P.M. Board of Directors Meeting.....Mountain Room  
 8:00 P.M. Buffet Dinner—Board and  
 wives .....Mountain Room

## TUESDAY, OCTOBER 26, 1954

9:00 A.M. - 6:00 P.M. Registration .....Lobby near Clock  
 10:00 A.M. WORKSHOP SESSION.....Mountain Room  
 President Robert Van Leunen presiding  
 COST MANUAL COMMITTEE  
 REPORT .....Paul Bertell  
 INDUSTRY COMMITTEE  
 REPORT .....Ben Newton  
 NOMINATING COMMITTEE  
 REPORT .....John F. Donnelly  
 ELECTION OF OFFICERS  
 "THE SILVER CRISES"  
 .....Rear Admiral Donald J. Ramsey  
 MARKET DEVELOPMENT  
 COMMITTEE .....J. M. Cheek, Jr.  
 "IMPACT OF NEW MIRROR DESIGN"  
 Moderator of Panel.....Paul Van Oss  
 Members of the Panel.....J. M. Cheek, Jr.  
 W. D. Ruhland



*Government's Exhibit 64.*

12:30 P.M.

## LUNCHEON WORKSHOP

SESSION ..... Lower Plantation Room  
Vice President Milton K. Rubin presiding

## EXHIBITORS' PANEL

Moderator: Arthur Bienenfeld

Members of the Panel:

William O. Austin, Jr. .... Red Devil Tools

Robert E. Burke ..... Handy &amp; Harman

William A. Clark ..... Peacock Laboratories, Inc.

R. A. Ericson ..... Surf Chemical Corporation

Jack Frick ..... Weber Showcase &amp;

Fixture Co., Inc.

A. W. Gaulke ..... Vanant Company, Inc.

Leonard W. Link ..... Sun Tool &amp; Machine Co.

and Super Cut Distributors, Inc.

E. R. Pierce ..... Libbey-Owens-Ford Glass Co.

H. W. Rathburn ..... Sommer &amp; Maca Glass

Machinery Co.

R. B. Sullivan ..... James H. Rhodes &amp; Co.

S. B. Treat ..... Lindsay Chemical Co.

2:00 P.M.

Tour for the Ladies to the BILTMORE ESTATE  
Buses leave the front door of the Grove Park Inn.

3:00 P.M. - 6:00 P.M.

EXHIBITS OPEN ..... Green Room

6:30 P.M.

COCKTAIL PARTY ..... Sunset Terrace—weather  
permitting; or Grotto Room

Hosts: Pittsburgh Plate Glass Company

7:30 P.M.

BANQUET ..... Lower Plantation Room

President Robert Van Leunen presiding

8:30 P.M.

ENTERTAINMENT—

GRAHAM JACKSON ..... Lobby

Concert Artist and Entertainer

Hosts: Libbey-Owens-Ford Glass Company

Dancing

## WEDNESDAY, OCTOBER 27, 1954

9:00 A.M. - 8:00 P.M.

Registration ..... Lobby near Clock

10:00 A.M.

GENERAL SESSION ..... Mountain Room

President Robert Van Leunen presiding

PRESIDENT'S ADDRESS ..... Robert Van Leunen

THE CUSTOMER'S VIEWPOINT

Architect—Henry Irving Gaines,

The Six Associates, Asheville, N. C.

Interior Decorator—Rex Pruitt, Rich's,

Atlanta, Ga.

Furniture Buyer—Graham Morrison,

Morrison Furniture Co., Asheville, N. C.

THE PLATE GLASS MANUFACTURERS'  
VIEWPOINT

E. C. Walbridge—Libbey-Owens-Ford Glass Co.

W. A. Gordon—Pittsburgh Plate Glass Co.

THE ECONOMIC VIEWPOINT

Jonathan Woody, President, First National

Bank, Waynesville, N. C.



*Government's Exhibit 64.*

1:00 P.M.

GOLF TOURNAMENT—Grove Park Inn Course  
Play for Clyde B. Willard Memorial Trophy  
and other prizes

Robert E. Stroupe, Golf Chairman

1:00 P.M. - 6:00 P.M.

EXHIBITS OPEN ..... Green Room

2:30 P.M.

Trip for the Ladies to Homespun Shops

6:30 P.M.

COCKTAIL PARTY AND BARBECUE

DINNER ..... Sunset Terrace or Lobby

Awarding of Golf Prizes..... Robert E. Stroupe

Installation of the New President

8:30 P.M.

SQUARE DANCE with Hillbilly Band.....Lobby

## MIRROR MANUFACTURERS ASSOCIATION

## OFFICERS

PRESIDENT—Robert Van Leunen, Central Glass Company, Inc.  
Evansville, IndianaVICE PRESIDENT—Milton K. Rubin, Metropolitan Mirror & Glass Co.  
Mount Vernon, New YorkSECRETARY-TREASURER—Harold L. Smith, Cadillac Glass Company  
Chicago, IllinoisEXECUTIVE SECRETARY—Minita Westcott, Tribune Tower  
Chicago, Illinois

## EXHIBITORS

- Booth 1. Libbey-Owens-Ford Glass Company  
 2. Surf Chemical Corporation  
 3. Sommer & Maca Glass Machinery Co.  
 4. Handy & Harman  
 5. Red Devil Tools  
 6. Vanant Company, Inc.  
 8. Weber Showcase & Fixture Co., Inc.  
 9. Pease & Curren, Inc.  
 10. Peacock Laboratories, Inc.  
 11. Super Cut Distributors, Inc.  
 Sun Tool & Machine Co.  
 12. James H. Rhodes & Co.  
 Lindsay Chemical Co.  
 13. Mirror Manufacturers Association

## 1954 ANNUAL MEETING COMMITTEES

## PROGRAM COMMITTEE

Kenneth H. Hearn, Chairman  
Arthur Bienenfeld  
Milton K. Rubin  
Robert E. Stroupe

## SUPPLIERS EXHIBIT COMMITTEE

Arthur Bienenfeld, Chairman  
Paul Bertell  
Milton S. Binswanger, Jr.  
Milton K. Rubin

## GOLF CHAIRMAN

Robert E. Stroupe

## HOSSESS COMMITTEE

Mrs. Robert Van Leunen, Chairman  
Mrs. Arthur Bienenfeld  
Mrs. E. F. Gardner  
Mrs. Milton K. Rubin  
Mrs. Robert E. Stroupe

**Government's Exhibit 65.****MMA Member and Non-Member Registration List 1954  
Annual Meeting at Asheville, North Carolina.****MIRROR MANUFACTURERS ASSOCIATION****1954 ANNUAL MEETING**

October 24 to 27, 1954

Grove Park Inn, Asheville, N. C.

**MEMBER REGISTRATION LIST**

November 4, 1954

Art Plate Glass &amp; Mirror Corporation

932-38 Linden Avenue

Baltimore, Maryland

Calvin K. Breacklein &amp; Mrs.

Howard W. Breacklein &amp; Mrs.

Bamac Bache &amp; Co.

Greenwich &amp; Morton Streets

New York 14, New York

Ben Newton

Binswanger Mirror Company

645-657 Union Avenue

Memphis 1, Tennessee

Harry H. Mook

Boston Plate &amp; Window Glass Company

40 Wormwood Street

Boston 10, Massachusetts

Ralph Haywood

Forbes Allen

Carolina Mirror Corporation

North Wilkesboro,

North Carolina

Ralph G. Buchan

Central Glass Company, Inc.

Franklin at Fulton Avenue

Evansville 7, Indiana

Robert Van Laurwer &amp; Mrs.

Century Industries, Inc.

1519-23 W. 35th Street

Chicago 9, Illinois

Arthur Bienenfeld &amp; Mrs.

Galax Mirror Company

Galax,

Virginia

J. A. Messer, Sr.

J. A. Messer, Jr.

Hagemann Companies, Inc., The

2145 Central Parkway

Cincinnati 14, Ohio

Fred H. Hagemann

Hart Mirror Plate Company

101 Front Avenue, Southwest

Grand Rapids 4, Michigan

John Van Cas

Paul Van Cas

Hubbuck Glass Company

1855 Central Avenue

Chattanooga 8, Tennessee

Otto J. Hubbuck &amp; Mrs. &amp; Amy

Metropolitan Mirror &amp; Glass Co.

Fulton Lane &amp; 7th Street

Mt. Vernon, New York

Milton K. Rubin &amp; Mrs.

Mount Airy Mirror Company

P. O. Box 669

Mount Airy, North Carolina

John M. Cheek, Jr.

Murts Companies, Inc., The

Illegible

New Jersey

ILLEGIBLE

*Government's Exhibit 65.*

## A Member Registration List—1954 Annual Meeting

Standard Mirror Company  
141-157 Milton Street  
Buffalo 10, New York  
Paul Bertell & Mrs.

Stroupe Mirror Company  
Thomasville, North Carolina  
Robert E. Stroupe

Van Gilder Glass Company  
P. O. Box 3011  
Knoxville 17, Tennessee  
Rolf-Dieter Pohl

Virginia Mirror Company  
Martinsville, Virginia  
K. H. Hearn

Weaver Mirror Company, Inc.  
Drawer 270  
Rocky Mount, Virginia  
R. E. Weaver & Mrs.

Willard Mirror Company  
Factory District  
Fort Smith, Arkansas  
K. P. Willard & Mrs.

mte-11-8-54  
M-267

R 12 525

11 2327

*Government's Exhibit 65.*MIRROR MANUFACTURERS ASSOCIATION  
NON-MEMBER REGISTRATIONGrove Park Inn  
Asheville, North Carolina  
October 24-27, 1954Century Engineering Co.  
4-18 Crone Street  
Clifton, New Jersey  
Edward F. Harecz  
L. A. Darling Co. (L. O. F.)  
Bronson, MichiganRussell J. Larson  
Glass Digest  
225 Lafayette Street  
New York 12, New York  
W. Arthur LeeHandy & Harman  
15 W. 46th Street  
New York, New York  
John J. McNultyLibbey-Owens-Ford Glass Co.  
1122 Mutual Assurance Bldg.  
Richmond 19, Virginia  
H. S. SteeceLibbey-Owens-Ford Glass Co.  
National Bank Building  
Toledo 3, OhioH. Creston Doner  
F. Dwight Haigh, Jr.  
D. Kenkle  
Mr. and Mrs. John S. WatsonLindsay Chemical Company  
West Chicago, Illinois  
S. B. TreatLink Glass Machine Co.  
744 Book Building  
Detroit, Michigan  
Leonard W. LinkPeacock Laboratories, Inc.  
54th and Paschall Avenue  
Philadelphia 43, Pennsylvania  
Charles C. Ciocca  
William A. ClarkPease & Curren, Inc.  
780 Allans Avenue  
Providence, Rhode Island  
James F. Cole  
Vincent T. MurphyPittsburgh Plate Glass Co.  
Pittsburgh, Pennsylvania  
R. H. Borroughs  
W. A. Gordon  
F. A. Ketcham  
Olan F. Levell, Jr.Red Devil Tools  
130 Coit Street  
Irvington, New Jersey  
William O. Austin, Jr.James H. Rhodes & Co.  
48-02 Twenty-Ninth Street  
Long Island City, New York  
Ralph Siewers  
I. B. Southerland  
Robert B. SullivanSommer & Maca Glass Machinery  
3600 South Oakley Avenue  
Chicago, Illinois  
Paul Maca  
Jack Rathburn  
Kurt SommerSun Tool & Machine Co.  
4801 Bennett Road  
Toledo, Ohio  
Milton ZiemsSuper-Cut, Inc.  
Sun Tool Co.  
2232 Kenmore Drive  
Okemos, Michigan  
James F. Chapman  
C. A. Wright



*Government's Exhibit 65.***MMA Non-Member Registration—1954 Annual Meeting**

Surf Chemical Corp.  
1021 Victory Place  
Burbank, California  
Richard A. Ericson  
Arthur R. Weinrich

Vanant Co., Inc.  
1983 South Allis Street  
Milwaukee, Wisconsin  
Leslie G. Freedy  
Arthur W. Gaulke  
R. B. McCutcheon  
Lloyd Van Antwerpen

Weber Showcase & Fixture Co.  
5700 Avalon Boulevard  
Los Angeles, California  
Jack E. Frick

mte  
11-9-54  
M-270

**R 12 527****11 2329**



**Government's Exhibit 69.**

**Long Distance Telephone Ticket on Calls from Grove Park  
Inn Charged to Hearn.**

(FRONT)

**LONG DISTANCE TELEPHONE CALLS**

	No.	07144	
Name	Kenneth Hearn	Room No.	443
City Called	Lenoir	State	N. C.
Number Called			
Name Called			
		TIME	
		Connected	Disconnected
		12 min	
	Phone Co. Charge.....	2.45	
Date	10/27/54	Tax .....	.25
Operator	M. Browning (38)	Our Service Charge..	.20
	Total .....	2.90	

**FORM 118A JOHN WILLY, INC.—EVANSTON, ILL. 34809A**

621

*Government's Exhibit 69.*

(BACK)

60-164

1-30-57

CHARGE

OCT 27 1954

GROVE PARK INN

No.....

OCT 27 PM 10:11

**Government's Exhibit 70.****Long Distance Telephone Ticket on Calls from Grove  
Park Inn Charged to Gordon.**

(FRONT)

**LONG DISTANCE TELEPHONE CALLS**

No. 07145

Name Gordon, W. A.

Room No. 369

City Called Lenoir

State N. C.

Number Called

Name Called

	Connected	TIME Disconnected
		14 min

Phone Co. Charge.... 2.15

Date 10/27/54

Tax ..... .22

Operator M. Browning (140) Our Service Charge.. .20

Total ..... 2.57

FORM 118A JOHN WILLY, INC.—EVANSTON, ILL. 34809A

623

*Government's Exhibit 70.*

(BACK)

~~60-164~~

1-30-57

CHARGE

GROVE PARK INN

No. ....

1954 OCT 27 PM 10:49

624

**Government's Exhibit 71.**

**Long Distance Telephone Ticket on Calls from Grove  
Park Inn Charged to Levell.**

**(FRONT)**

**LONG DISTANCE TELEPHONE CALLS**

Name	Levell	No.	07080
City Called	Lenoir	Room No.	349
Number Called		State	N. C.
Name Called		TIME	
		Connected	Disconnected
		4 Min	
Date	10/25/54	Phone Co. Charge.....	1.05
Operator	NC OP39	Tax .....	.11
		Our Service Charge..	.20
		Total .....	1.36

FORM 118A JOHN WILLY, INC.—EVANSTON, ILL. 34809A



625

*Government's Exhibit 71.*

(BACK)

60-164

1-30-57

CHARGE

GROVE PARK INN

No.....

1954 OCT 27 PM 7:13

**Government's Exhibit 72.****Long Distance Telephone Ticket on Calls from Grove  
Park Inn Charged to Hearn.**

(FRONT)

**LONG DISTANCE TELEPHONE CALLS**

Name	Hearn	No.	07146
City Called	Lenoir	Room No.	443
Number Called		State	N. C.
Name Called		Connected	TIME Disconnected
			4 Mins
Date	10/27/54	Phone Co. Charge.....	.65
Operator	MB 140	Tax .....	.07
		Our Service Charge....	.20
		Total .....	.92
FORM 118A JOHN WILLY, INC.—EVANSTON, ILL. 34809A			

627

*Government's Exhibit 72.*

(BACK)

60-164

1-30-57

CHARGE

GROVE PARK INN

No. ....

1954 OCT 27 PM 7:13

**Government's Exhibit 88.****Southern Bell Telephone Bill to A. G. Jonas, Dated  
November 26, 1954.**

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Please Bring Bill and Stub When Paying in Person

219 W. Harper St., Lenoir, N. C.—Tel. No. Plaza 4-9011

Office Hours 8:30 A. M. to 5:00 P. M. Monday through Friday

Always at Your Service

November 26, 1954

LONG DISTANCE

A. G. JONAS, JR.

PL 4

Quick Easy Inexpensive

5475

Box 792

Lenoir, N. C.

M

Local Service and Equipment..... .50 5 50

(Illegible)

Toll Service and Telegrams (Illegible) ..... 15 68

Directory Advertising (Illegible)

Other Charges and Credits (Illegible)

Balance from Last Bill

(Illegible)

Total Amount Due

21 18\*

**R 19-56**

*Government's Exhibit 88.*

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY**  
**Toll Service and Telegrams**

<b>PLACE CALLED</b> (See Reverse for explanation of abbreviations)		<b>CHARGE</b>
4		
5475		
Oct		
27	STVL .....	2.50
28	" .....	2.70
28	WBO .....	2.00
29	HKY .....	1.10
29	TOCCOA .....	.90
Nov		
12	CHLOT .....	.80
16	TOCCOA .....	1.80
	" .....	1.65
17	CHLOT .....	.80
U. S. Tax (10% on telephone messages and telegrams .....		1.43
Total Carried to Bill .....		15.68

**EXPLANATION OF LETTERS FOLLOWING PLACE CALLED***C—Message received collect T—Telegram***Form 5N-643-A (N. C. 1) (Apr. '54)**



**Government's Exhibit 89.****Southern Bell Telephone Bill to Lenoir Mirror, Dated  
November 26, 1954.**

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Please Bring Bill and Stub When Paying in Person.

219 W. Harper St., Lenoir, N. C.—Tel. No. Plaza 4-9011

Office Hours 8:30 A. M. to 5:00 P. M. Monday through Friday

Always at Your Service.

**LONG DISTANCE**

Quick Easy Inexpensive

November 26, 1954

LENOIR MIRROR CO.

PL 4  
5167

Box 798

Lenoir, N. C.  
M

Local Service and Equipment..... (Illegible)	1.87	20 76
Toll Service and Telegrams (Illegible).....		75 44
Directory Advertising (Illegible)		
Other Charges and Credits (Illegible)		
Balance from Last Bill (Illegible)		
Total Amount Due		96 20*

**R 19-50**

*Government's Exhibit 89.***SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY****Toll Service and Telegrams**

<b>4.</b> <b>5167</b>	<b>Place Called (illegible)</b>	<b>Charge</b>
<b>Oct</b>		
<b>26</b>	<b>CHLOT</b> .....	<b>1.50</b>
	<b>STVL</b> .....	<b>.60</b>
	<b>CKVBG</b> .....	<b>1.70</b>
<b>26</b>	<b>"</b> .....	<b>1.20</b>
	<b>MRTV</b> .....	<b>1.00</b>
<b>27</b>	<b>GR F</b> .....	<b>.35</b>
<b>28</b>	<b>ASVL</b> .....	<b>2.60</b>
	<b>MANNING</b> .....	<b>1.80</b>
	<b>CKBG</b> .....	<b>1.20</b>
<b>29</b>	<b>HPT</b> .....	<b>.65</b>
	<b>PITB</b> .....	<b>2.05</b>
<b>30</b>	<b>CKBG</b> .....	<b>1.45</b>
<b>Nov</b>		
<b>1</b>	<b>CHLOT</b> .....	<b>.80</b>
	<b>CGO T</b> .....	<b>1.43</b>
	<b>LEX</b> .....	<b>1.50</b>
	<b>PITB</b> .....	<b>1.45</b>
	<b>"</b> .....	<b>1.45</b>
	<b>GNBO</b> .....	<b>.70</b>
<b>23</b>	<b>HKY</b> .....	<b>.36</b>
	<b>"</b> .....	<b>.90</b>
<b>5</b>	<b>MTON</b> .....	<b>.40</b>
	<b>HKY</b> .....	<b>.45</b>
	<b>STVL</b> .....	<b>.75</b>

**U. S. Tax (10% on telephone mes-**  
**sages and telegrams).....**

**Total Carried to Bill.....**

**EXPLANATION OF LETTERS FOLLOWING**

**PLACE CALLED**

**(illegible)**

**Form 5N-643-A (N. C. 1) (Apr. '54)**

*Government's Exhibit 89.***SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY****Toll Service and Telegrams**

	<u>Place Called (illegible)</u>	<u>Charge</u>
Nov		
6	CKBG .....	1.45
8	STVL .....	.45
	GNBO .....	.70
	CGO .....	1.65
	PITB .....	2.05
9	MTON .....	.25
	HKY .....	.45
	" .....	1.20
	CHLOT .....	1.50
	" .....	2.40
10	THSV .....	1.20
	VDSE .....	.35
	PITB .....	1.45
11	STVL .....	.45
	THSV .....	1.80
12	CHLOT .....	.90
	HKY .....	.45
	STVL .....	.60
13	SALIS .....	.80
15	CHLOT .....	.60
15	LEX .....	.90
	STVL .....	.90
	ATLA .....	1.90

U. S. Tax (10% on telephone mes-  
sages and telegrams).....

Total Carried to Bill .....

EXPLANATION OF LETTERS FOLLOWING PLACE CALLED

Form 5N-643-A (N. C. 1) (Apr. '54)

*Government's Exhibit 89.***SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY****Toll Service and Telegrams**

	<u>Place Called (illegible)</u>	<u>Charge</u>
4		
5167		
Nov		
15	PITB .....	2.05
16	HKY .....	.60
	STVL .....	.45
17	GR F .....	.20
17	STVL .....	.65
18	GR F .....	.45
18	HKY .....	.30
	DTVL .....	.60
18	CKBG .....	1.20
19	CHLOT .....	2.00
	CKBG .....	1.20
22	MTON .....	.40
	PHLA .....	1.15
23	GASA .....	1.10
23	STVL .....	.75
23	STVL .....	.45
	PITB .....	2.35
24	STVL .....	.60
	PITB .....	1.45
U. S. Tax (10% on telephone mes-		
sages and telegrams).....		6.86
Total Carried to Bill.....		75.54

**EXPLANATION OF LETTERS FOLLOWING  
PLACE CALLED**

**Government's Exhibit 90.**

**Lenoir Mirror Announcement of 78% Discount Off 1950 List  
Dated October 29, 1954, Effective November 1, 1954,  
Addressed to Hickory Manufacturing Company.**

October 29, 1954

Hickory Manufacturing Company.  
Hickory, North Carolina

Gentlemen:

Effective as of November 1st, we are pleased to quote a discount of 78% off the April 1, 1950 mirror list on plain plate glass mirrors.

Straight line beveling will be charged at 1¢ per lineal inch and polished edges at 1/2¢ per lineal inch.

All orders now on file with us will be furnished on the old basis.

Very truly yours,

LENOIR MIRROR COMPANY,  
A. G. JONAS

AGJ/ba

R 19 79



**Defendants' Exhibit 1.**

**Inter office memo from Messer to Cheek effective as of  
1 June 1954—discount of 78 and 10 off 1950 list.**

**MOUNT AIRY MIRROR COMPANY  
Inter-Office Correspondence**

**Date May 17, 1954**

**To J. M. Cheek, Jr.**

**From J. A. Messer, Jr.**

**Subject: Industrial Price Schedule**

**The following schedule is to be effective June 1, 1954  
and prices will apply to all shipments on and after that  
date:**

**Plain mirrors—1950 list less 78% and 10%.**

**1/2" Bev.—1¢ per inch.**

**Polished edge—1/2¢ per inch.**

**Other extras use 1950 schedule.**

**The above prices are to be quoted all regular customers.  
Terms—2% 10 EOM**

**/MB**

**/s/ J. A. M. Jr.**

**COPY**

### Defendants' Exhibit 3.

**Galax-Mt. Airy Announcement of Discount of 77% Off List  
with Typed List Attached of Furniture Manufacturers  
to Receive Same Dated January 27, 1955.**

**GALAX MIRROR COMPANY  
Incorporated**

*Manufacturers of Mirrors* GALAX, VIRGINIA

CARROLL FURNITURE CO., INC.  
GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CO., INC.

January 27, 1955

To OUR CUSTOMERS:

Gentlemen:

On account of the scarcity of glass and the high cost of production, we are forced to withdraw prices as of this date.

We quote the following price on plain mirrors: 77 off the present price list.

We are also forced to raise bevel work and edge work on account of higher costs of everything connected with this work. Beveling will be 1½¢ per inch; edge work will be ¾¢ per inch.

We are sorry that we have to do this at this particular time but it is the first time that we have found ourselves not able to operate profitably in working for furniture factories alone.

The small amount of glass that we are now receiving denies us the privilege of shipping to retail stores, who are begging for mirrors at any price. We are getting just enough glass to take care of our furniture customers.

We shall try to continue to give you good mirrors and good service, but we can no longer do so at a loss.

Thank you for your past business.

Yours very truly,

GALAX MIRROR COMPANY, INC.  
MT. AIRY MIRROR COMPANY, INC.

J. A. MESSER, SR.  
J. A. MESSER, SR.

Crim. No. 5790

Exhibit No. 3

Plaintiffs ( )

Defendants (✓)

Identification (✓)

Admitted (✓)

Date 11-19-57

Witness May 20

Court Reporter—Mary White Bible

JAMsr/M

*Defendants' Exhibit 3.*

Athens Bed Co.  
Athens, Tenn.

American Furniture Co.  
Martinsville, Va.

American Novelty & Furniture Co.  
Petersburg, Va.

Basic-Witz Furn. Industries  
Waynesboro, Virginia

Basic-Witz Furn. Industries  
Staunton, Virginia

T. Baumritter Company  
171 Madison Ave.  
New York 16, N. Y.

Camden Furniture Co.  
Camden, Ark.

Chicago Table Company  
1805 East End Ave.  
Chicago Heights, Illinois

Coleman Enterprise Corp.  
Glen Rock, Pa.

A. E. Coburn Mfg. Co.  
Greene, Maine

Collegedale Wood Products  
Collegedale, Tennessee

Colony Furniture Co.  
1125 W. Elizabeth Ave.  
Linden, New Jersey

Crescent Mfg. Co.  
Gallatin, Tenn.

Forrest Products  
Morristown, Tenn.

Davis Cabinet Co.  
Nashville, Tenn.

Edison Wood Products  
New London, Wisc.

Essex Chair Company  
P. O. Box 594  
Union, N. J.

Gordon's, Inc.  
Johnson City, Tenn.

Glück Brothers, Morristown, Tenn.

Hampton Shops of Va.  
Newport News, Va.

S. R. Hungerford Co.  
2400 Friscoe Ave., Memphis 6, Tenn.

B. F. Huntley Furn. Co.  
314 N. Liberty St., Winston-Salem, N. C.

House of Hale  
246 W. Mallory  
Memphis, Tenn.

Johnston Furn. Mfg. Co.  
Columbus, Miss.

David M. Lea & Co., Inc.  
P. O. Box 1538  
Richmond, Va.

Lincoln Industries, Damascus, Va.

Mississippi Products Co.  
Jackson, Miss.

Morristown Chest Co.  
Morristown, Tenn.

The Norwood Mfg. Co.  
1020 So. Homan Ave., Chicago, Ill.

Palmer Furniture Co.  
Denmark, S. C.

Puritan Furn. Co.  
89 Washington St., Melrose, Mass.

Stanley Furn. Co.  
Stanleytown, Va.

Superior Sleeprite  
759 So. Washtenaw Ave.,  
Chicago, Illinois

Tombigbee Mill & Lumber Co.  
Columbus, Miss.

Joseph Turk Mfg. Co.  
Bradley, Ill.

Webb Furniture Co., Galax, Va.

Wytheville Chair Co.  
Wytheville, Va.



**Defendants' Exhibit 4.**

**Mount Airy Announcement of Discount of 77% Off 1950  
List Dated 16 September 1955 Effective  
Upon Receipt.**

**MT. AIRY MIRROR COMPANY  
Incorporated**

*Manufacturers of Mirrors* **MT. AIRY, NORTH CAROLINA**

MAIN C  
THOMASVIL  
TELEPHO

CARROLL FURNITURE CO., INC.  
GALAX FURNITURE CO., INC.  
GALAX MIRROR CO., INC.  
MT. AIRY MIRROR CO., INC.  
WEBB FURNITURE CO., INC.

**SEPTEMBER 16, 1955 PRICE CHANGE  
PLATE GLASS MIRRORS**

We regret to announce that due to higher costs, of which we are sure you are aware, and the extreme scarcity of plate glass, which has cut our production to a bare minimum, it is necessary to withdraw all previous prices and quotations.

Any orders on hand before this letter reaches you will be filled at the price taken. Any orders we receive after you receive this letter will be billed at the new price.

Any orders received will be given as prompt attention as possible.

We are quoting you a new price of 77 off the 1950 list: 1/2¢ per inch for edge work; 1¢ per inch for bevel work and terms are 2% 10 E. O. M.

**MOUNT AIRY MIRROR COMPANY, INC.**

**R 10 51**

## Defendants' Exhibit 12.

### Stroupe Mirror Schedule of Discounts During Period 1 January 1952 Through 16 November 1956.

STROUPE MIRROR COMPANY  
Mirrors • Unframed • Framed • Venetian  
Thomasville, North Carolina

WALL MIRROR  
ASSEMBLY PLANT  
HIGH POINT, N. C.

Appendix  
Part 2  
Explanation

Since our furniture customers are relatively few in number, changes in price schedules are generally put into effect by personal calls. A schedule showing discounts in effect from List Prices of Plain Mirrors April 1, 1950, from January 1, 1952 to the present date is listed below. Since only one change was made by letter "to our customers", it was necessary for us to establish the effective dates of the other changes from copies of our invoices to our furniture manufacturer customers.

(a) The Corporation

(b) None

(c) None

(i) Prices in effect to plain mirror customers based on discounts from list prices of plain mirrors from January 1, 1952 to November 16, 1956.

<u>Date</u>	<u>Discount from list</u>
January 1, 1952 to December 4, 1952.....	80%
December 4, 1952 to October 13, 1953.....	79%
October 13, 1953 to January 29, 1954.....	80%
January 29, 1954 to June 4, 1954.....	80 & 10%
June 4, 1954 to November 23, 1954.....	80%
November 23, 1954 to July 2, 1956.....	78%
July 2, 1956 to November 16, 1956 (and present) .....	77%

(ii) None



**Defendants' Exhibit 14.**

**Roanoke Grand Jury subpoena duces tecum addressed  
to PPG issued November 16, 1956.**

**UNITED STATES DISTRICT COURT**

FOR THE

**WESTERN DISTRICT OF VIRGINIA**

XXXXXXXXXX

X

No. ....

In re: GRAND JURY

To Pittsburgh Plate Glass Company  
One Gateway Center  
Pittsburgh, Pennsylvania

You are hereby ~~commanded~~ to appear in the United States District Court for the Western District of Virginia at Room 307 Federal Bldg. in the city of Roanoke on the 5th day of December 1956 at 9:30 o'clock A. M. to testify before the Grand Jury and bring with you documents and records as described in the Appendix attached hereto and made a part hereof.

This subpoena is issued on application of the<sup>1</sup> United States Attorney.

Nov. 16, 1956.

C. E. GENTRY,  
Clerk.

JOHN STRICKLER,  
Attorney for Pl.  
Roanoke, Va.  
Address

By STELLA M. LANGFORD,  
Deputy Clerk.

**RETURN**

Received this subpoena at  
and on \_\_\_\_\_ at \_\_\_\_\_  
the within named \_\_\_\_\_  
a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_  
attendance and the mileage allowed by law.

on \_\_\_\_\_  
I served it on \_\_\_\_\_  
by delivering \_\_\_\_\_  
the fee for one day's \_\_\_\_\_

By.....

Service Fees

Travel .....	\$
Services .....	
Total .....	\$

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

*Defendants' Exhibit 14.***Appendix**

[Unless otherwise designated or enumerated herein, the following terms used in this subpoena shall have the following meanings:

A. "Company" shall mean the Pittsburgh Plate Glass Company and its offices, branches, divisions and warehouses.

B. "Documents" shall mean the originals (or copies thereof where originals are not available) of minutes of meetings of the Company, the Mirror Manufacturers Association and the Flat Glass Jobbers Association, records, correspondence, price lists, price list work sheets, compilations, formulae, bulletins, circulars, manuals, pamphlets, reports, intra-company Forms 1260, entitled "Competitive Price Information," notices, memoranda, diaries, letters, telegrams, teletype messages, and records of telephone conversations and inter or intra-office communications, whether prepared, sent or received by the Company, in the possession or control of the Company and wherever located.]

1. All documents, during the period from November 1, 1948 to the date of the service of this subpoena, which refer or relate to:

(a) the revision or replacement of the "Official List Prices of Plain Mirror Plates," bearing date of December 1, 1936, and copyrighted by the Mirror Manufacturers Association and the National Glass Distributors Association;

(b) the contents, compilation, preparation, establishment, copyrighting, sponsorship, printing, distribution, sale, purpose or use of the "List Prices of Plain Mirrors" bearing date of April 1, 1950, and bearing insignia "MMA";

(c) the contents, compilation, preparation, establishment, distribution, purpose, or use of Pittsburgh Plate Glass Company's "Lists of Prices of Plain Mirrors" bearing date of April 25, 1950;

(d) the contents, compilation, preparation, establishment, purpose or use of any other actual or proposed list prices of plain mirrors.

*Defendants' Exhibit 14.*

2. Documents, or in lieu thereof lists, showing, during each of the years 1954 and 1955, the names of the Company's High Point, North Carolina and Roanoke, Virginia, warehouse customers of plain mirrors in each of the following classes, and the total amount of sales to each class of trade:

- (1) Furniture manufacturers
- (2) Store fixture manufacturers
- (3) Glass or mirror jobbers
- (4) Retail traders
- (5) Each other class of trade regularly solicited or sold.

3. The Company's glass manuals for its High Point and Roanoke warehouses, during the period from July 16, 1953 to the date of service of this subpoena, and such additional documents during such period to show:

- (a) the announcement, establishment, or changing of discounts from list price on plain mirrors, or
- (b) the announcement, establishment or changing of prices of plain mirrors (other than through discounts from list prices),

to each of the following classes of customers of the Company's High Point and Roanoke warehouses:

- (1) Furniture manufacturers
- (2) Store fixture manufacturers
- (3) Glass or mirror jobbers
- (4) Retail traders
- (5) Each other class of trade regularly solicited or sold.

4. All documents, during the period January 1, 1952 to the date of the service of this subpoena, which refer or relate to:

- (a) the establishment, changing, maintenance or fixing of discounts from list prices on plain mirrors;



*Defendants' Exhibit 14.*

(b) the establishment, changing, maintenance or fixing of prices of plain mirrors (other than through discounts from list prices),

to each of the following classes of customers of any mirror manufacturer in North Carolina or Virginia other than the Company's High Point and Roanoke warehouses:

- (1) Furniture manufacturers
- (2) Store fixture manufacturers
- (3) Glass or mirror jobbers
- (4) Retail traders
- (5) Each other class of trade regularly solicited or sold.

5. All documents, during the period from January 1, 1952 to the date of service of this subpoena, which refer or relate to any action to be taken by two or more mirror manufacturers, wherever located, for the establishment, changing, maintenance, or fixing of (i) discounts from list prices on plain mirrors, or (ii) prices on plain mirrors (other than through discounts from list prices).

**Defendants' Exhibit 15.**

**PPG Response to Roanoke Grand Jury Subpoena (Defense Exhibit 14) Showing Dollar Sales of Plain Mirrors for Years 1954, 1955, and 1956 to PPG's Classes of Trade, Including Fixture Manufacturers.**

PHP-213

PPG HIGH POINT WAREHOUSEFURNITURE MANUFACTURER CUSTOMERS1954

Caro-Craft, Inc.,  
 B. F. Huntley Furniture  
 Jordan Furniture Co.  
 Kemp Furniture Specialty Co.  
 Mullins Lumber  
 Sandhill Furniture Corp.  
 Sanford Furniture Co.  
 White Furniture Co.

Total dollar sales of plain mirrors to the  
 above customers ..... \$126,712.97



*Defendants' Exhibit 15.*

PHP-213  
(Revised)

PPG HIGH POINT WAREHOUSEFURNITURE MANUFACTURER CUSTOMERS1954

Caro-Craft, Inc.

Greer Furniture Co.

B. F. Huntley Furniture Co.

Jordan Furniture Co.

Kemp Furniture Specialty Co.

Mullins Lumber Co.

Sandhill Furniture Corp.

Sanford Furniture Co.

White Furniture Co.

Total dollar sales of plain mirrors to above customers .....	\$126,712.97
--	--------------

Total dollar sales of fabricated (unframed) mirrors to above customers.....	112,855.42
---	------------

Grand Total .....	<u>\$239,568.39</u>
-------------------	---------------------

646

*Defendants' Exhibit 15.*

PHP-214

P P G HIGH POINT WAREHOUSE

STORE FIXTURE MANUFACTURER CUSTOMERS

1954

Morrison Furniture & Fixture Co.

Wade Manufacturing Corp.

Total dollar sales of plain mirrors to the above  
customers .....

\$528.96

*Defendants' Exhibit 15.*

PHP-214

(Revised)

P P G HIGH POINT WAREHOUSESTORE FIXTURE MANUFACTURER CUSTOMERS1954

Morrison Furniture &amp; Fixture Co.

Wade Manufacturing Corp.

Total dollar sales of plain mirrors to above customers .....	\$528.96
Total dollar sales of fabricated (unframed) mirrors to above customers .....	2,570.28
Grand Total .....	<u>\$3,099.24</u>

*Defendants' Exhibit 15.*

PHP-215

P & G HIGH POINT WAREHOUSEGLASS SHOP CUSTOMERS1954

Artercraft Glass Co.

Burlington Paint &amp; Glass Co.

Joyner Glass Shop

Mercer Glass Shop

Mirror-Art Glass &amp; Mirror Co.

Oliver Glass Shop

Register Glass Shop

Russell Glass Shop

Stewart Glass Company

• • • • •

Total dollar sales of plain mirrors to the above  
customers .....

\$3,760.69



*Defendants' Exhibit 15.*

PHP-216

P P G HIGH POINT WAREHOUSEDEALER—HARDWARE AND FURNITURE STORE—CONTRACTOR—CUSTOMERS1954

J. E. Black	Parham-Darr Const. Co.
Beeson Hdwe. Co.	Pelham, Shell & Lackie
Bottoms Fiske Truck Lines	Hugh D. Pinkston
Carolina Auto Glass	Rhodes Press
Carter Furniture Co.	Roebuck Brothers
Carthage Furniture Co.	Rose's 5-10-25¢ Stores
Chatham Furniture Co.	R. N. Rouse & Co., Inc.
Clark Furniture Co.	C. V. Safrit
H. L. Coble Const. Co.	A. B. Sally
Collins Auto Supply Co.	Sampson Hdwe. Co.
Commerce Furniture Co.	Sanford Sash & Blind Co.
Dark & Harrington	Sandhill Builders Supply Co.
Davis Upholstery Co.	Sands Furniture Co.
Dixie Supply Co.	Shoffner Supply Co.
Economy Furniture Co.	Snow Lumber Co.
Erwin Mills, Inc.	Southern Pines Warehouses, Inc.
Farmers Hdwe. & Supply Co.	Sprott Brothers Furn. Co.
J. D. Gable	Troy Furniture Co.
Fred C. Gardner	Utility Craft Lumber Co.
Godwin Building Co.	E. M. Ward Co.
Goodman Lumber Company	Wilkins & Wilkins Gen. Contractors
Edward Gurley, Jr.	O. L. Wilson Bldg. Co.
Hallum Furniture Co.	Wray Building Materials Co., Inc.
Hedgcock Lumber Co.	
Hoke Auto Co.	
Holmes Antique	
Home Building, Inc.	
Jay Jewelers	
Kinney Shoe Store	
Klopman Mills, Inc.	
Lee Hardware Co.	
Memory and Russell	
J. B. Messick Lumber Co.	

\*                      \*                      \*                      \*

Total Dollar Sales of Plain Mirrors to the Above  
Customers .....

\$2,998.53



*Defendants' Exhibit 15.*

PHP-217

P P G HIGH POINT WAREHOUSEFURNITURE MANUFACTURER CUSTOMERS1955

Caro Craft, Inc.  
Carysbrook Reproductions Furniture Co.  
Craftique, Inc.  
B. F. Huntley Furniture Co.  
Jordan Furniture Co.  
Kemp Furniture Specialty Co.  
Mullins Lumber  
Pinecroft Industries, Inc.  
Sandhill Furniture Corp.  
Sanford Furniture Co.  
White Furniture Co.

Total dollar sales of plain mirrors to the  
above customers ..... \$164,172.54

*Defendants' Exhibit 15.*

PHP-217  
(Revised)

PPG HIGH POINT WAREHOUSE

FURNITURE MANUFACTURER CUSTOMERS

1955

Caro-Craft, Inc.

Carysbrook Reproductions Furniture Co.

Craftique, Inc.

B. F. Huntley Furniture Co.

Jordan Furniture Co.

Kemp Furniture Specialty Co.

Mullins Lumber Co.

Pinecroft Industries, Inc.

Sandhill Furniture Corp.

Sanford Furniture Co.

White Furniture Co.

Total dollar sales of plain mirrors to above  
customers ..... \$164,172.54

Total dollar sales of fabricated (unframed)  
mirrors to the above customers..... 28,516.24

Grand Total ..... \$192,688.78

652

*Defendants' Exhibit 15.*

PHP-218

P P G   H I G H   P O I N T   W A R E H O U S E

S T O R E   F I X T U R E   M A N U F A C T U R E R   C U S T O M E R S

1 9 5 5

Morrison Furniture & Fixture Company

Wade Manufacturing Corp.

•   •   •   •   •   •   •  
Total dollar sales of plain mirrors to the  
above customers .....

\$ 427.42

*Defendants' Exhibit 15.*PHP-218  
(Revised)PPG HIGH POINT WAREHOUSESTORE FIXTURE MANUFACTURER CUSTOMERS1955

Morrison Furniture &amp; Fixture Co.

John M. Tyndall Fixtures

Wade Manufacturing Corp.

Total dollar sales of plain mirrors to the above customers .....	\$ 427.42
Total dollars sales of fabricated (unframed) mirrors to the above customers.....	6,470.21
Grand Total .....	<u>\$6,897.63</u>



*Defendants' Exhibit 15.*

PHP-219

PPG HIGH POINT WAREHOUSEGLASS SHOP CUSTOMERS1955

Atlantic Glass Co.

Ernest Glass Co.

Joyner Glass Shop

Mercer Glass Shop

Mirror-Art Glass &amp; Mirror Co.

R &amp; S Glass Shop

Register Glass Shop

Total dollar sales of plain mirrors to the  
above customers .....

\$ 2,349.40



*Defendants' Exhibit 15.*

PHP—220

**PPG HIGH POINT WAREHOUSE****DEALER—HARDWARE AND FURNITURE STORE—****CONTRACTOR—CUSTOMERS****1955**

Auto Sales Inc.	Koster Supply Co.
Black Lumber Co.	T. A. Loving & Co.
Bridgers Paint & Wallpaper Co.	Allie McIntosh
W. A. Brown & Son	Marion Furniture Co.
Floyd S. Burge Const. Co.	Marsden-Slate Co.
C & B Upholstery Co.	Miller Lumber & Bldg Supplies
J. W. Cadell	Millikan Furniture Co.
Cameron & Graham Co.	Moncure Furn. Co.
Carolina Auto Glass Co.	Parham-Darr Const. Co.
Carolina Auto Glass	Piedmont Home Improvement Co.
Carolina Woodcraft	Pinehurst Warehouses, Inc.
Carthage Furniture Co.	Hugh D. Pinkston
Charles F. Cates & Son	M. E. Robinson, Inc.
Cherokee Flooring Co.	Rodden Furniture Co.
Clark Furniture Co.	S & E Motor Service
Cline Lumber Company	A. B. Sally Inc.
Craver Paint Store	Sanford Sash & Blind Co.
Crouch Mfg. Co.	Sandhill Builders Supply
L. A. Dickens	G. W. Smith Lumber Co.
East Carolina Supply Co.	Southern Pines Warehouses, Inc.
J. D. Gable	D. B. Sutton & Son
Fred C. Gardner	The Trading Post
General Hdwe. & Lumber	Troy Furniture Co.
Goodman Lumber Co.	Henry H. Turner Studio
Mr. Louis Greenberg	Utility Craft
C. J. Hackney Furn. Co.	E. M. Ward Lumber Co.
T. L. Hayes Co.	
Hedgecock Lumber Co.	
Heilig & Meyers Furn. Co.	
Holmes Antiques	
Home Building, Inc.	
Home Furniture Co.	
Horton Furniture Co.	
Huske Hdwe House	
J. A. Jones Construction Co.	

Total Dollar Sales of Plain Mirrors To The Above  
Customers .....

**\$5,468.63**

*Defendants' Exhibit 15.*

PHP-221

PPG HIGH POINT WAREHOUSEFURNITURE MANUFACTURER CUSTOMERS1956.\*

Bonaventure Accessories, Inc.  
Caro-Craft, Inc.  
Craftique, Inc.  
Greer Furniture Co.  
Jordan Furniture Co.  
Kemp Furniture Specialty Co.  
Mullins Lumber Co.  
Sandhill Furniture Corp.  
Sanford Furniture Co.  
White Furniture Co.

Total dollar sales of plain mirrors to the above  
customers ..... \$149,060.17

• Eleven months only.

*Defendants' Exhibit 15.*

PHP-221  
(Revised)

PPG HIGH POINT WAREHOUSE  
FURNITURE MANUFACTURER CUSTOMERS

1956 \*

Bonaventure Accessories, Inc.

Caro-Craft, Inc.

Craftique, Inc.

Greer Furniture Co.

Jordan Furniture Co.

Kemp Furniture Specialty Co.

Mullins Lumber Co.

Sandhill Furniture Corp.

Sanford Furniture Co.

White Furniture Co.

Total dollar sales of plain mirrors to the above  
customers ..... \$149,060.17

Total dollar sales of fabricated (unframed)  
mirrors to the above customers..... 11,261.95

Grand total ..... \$160,322.12.

• Eleven months only.

*Defendants' Exhibit 15.*

PHP-222

PPG HIGH POINT WAREHOUSESTORE FIXTURE MANUFACTURER CUSTOMERS1956

Morrison Furniture &amp; Fixture Co.

John M. Tyndall

Wade Manufacturing Corp.

• • • • •

Total dollar sales of plain mirrors to above  
customers ..... \$ 803.67

• Eleven months only.



*Defendants' Exhibit 15.*PHP-222  
(Revised)PPG HIGH POINT WAREHOUSESTORE FIXTURE MANUFACTURER CUSTOMERS1956\*.

Morrison Furniture &amp; Fixture Co.

John M. Tyndall Fixtures

Wade Manufacturing Corp.

Total dollar sales of plain mirrors to above customers .....	\$ 803.67
Total dollar sales of fabricated (unframed) mirrors to the above customers.....	<u>6,414.63</u>
Grand Total	\$7,218.30

---

\* Eleven months only



*Defendants' Exhibit 15.*

PHP-223

PPG HIGH POINT WAREHOUSEGLASS SHOP CUSTOMERS1956\*

Joyner Glass Shop

Mercer Glass Shop

Oliver Glass Shop

Register Glass Shop

• • • • •

Total dollar sales of plain mirrors to the above  
customers— .....

\$1,038.34

\_\_\_\_\_

\* Eleven months only.

*Defendants' Exhibit 15.*

PHP-224

PPG HIGH POINT WAREHOUSEDEALER—HARDWARE AND FURNITURE STORE—CONTRACTOR—CUSTOMERS1956\*

D. R. Allen & Son  
 W. A. Brown & Son, Inc.  
 Carolina Auto Glass Co.  
 Chatham Mfg. Co.  
 Clark Furniture Co.  
 W. Howard Coble  
 Coltrane & Graham  
 Dixon Construction Co.,  
 Federal Supply Co.  
 J. D. Gable  
 Fred C. Gardner  
 General Hdwe. & Lumber  
 Co.  
 Goodman Lumber Co.  
 Graves Construction Co.  
 Gray Construction Co.  
 Gray Concrete Pipe Co.  
 Grifton Builders  
 Edward Gurley  
 The Home Building, Inc.  
 Home Furniture Co.  
 Hunt Construction Co.  
 Huske Hdwe. House  
 James Electric and Furni-  
 ture Co.  
 T. A. Loving Co.  
 Allie McIntosh  
 Madison Lumber Co.  
 Marion Furn. Co.  
 Martine's Inc.  
 Quinn Miller & Co.  
 Oettinger Bros.  
 Pinehurst, Inc.  
 Rhodes Press

Rogers Const. Co.  
 Sanford Sash & Blind Co.  
 Scarborough Repair Co.  
 G. W. Smith Lumber Co.  
 Snow Lumber Company  
 Southern Pines Warehouses,  
 Inc.  
 R. K. Stewart & Son  
 Town & Country Furn. Co.  
 Henry H. Turner Studio  
 Tuttle Hardware Co.  
 Utility Craft Furn. Co.  
 Volume Merchandising, Inc.  
 E. W. Wagoner  
 M. G. Waters Lumber Co.  
 Wright-Dickens Furn. Co.

Total Dollar Sales of Plain Mirrors

To The Above Customers \$1,380.31

\* Eleven months only

*Defendants' Exhibit 15.*

PHP-225

PPG HIGH POINT WAREHOUSEPLAIN MIRROR SALES TO STATE & GOVERNMENT AGENCIES

Total dollar sales of plain mirrors to state and governmental agencies:

<u>1954</u>	<u>1955</u>	<u>1956*</u>
\$1,117.94	\$1,024.23	\$1,713.88

---

\* Eleven months only

*Defendants' Exhibit 15.*

PHP 226

PPG HIGH POINT WAREHOUSEPLAIN MIRROR SALES TO DESIGNATED CLASSES OF TRADEYEARS 1954-1956

	<u>1954</u>	<u>1955</u>	<u>1956*</u>
Furniture Manufacturers....	\$126,712.97	\$164,172.54	\$149,060.17
Stove Fixture Manufacturers .....	528.96	427.42	803.67
Glass Shops.....	3,760.69	2,349.40	1,038.34
Dealers-Hardware Stores— Contractors .....	2,998.53	5,468.63	1,380.31
State & Governmental Agencies .....	1,117.94	1,024.23	1,713.88
Totals .....	<u>\$135,119.09</u>	<u>\$173,442.22</u>	<u>\$153,996.37</u>

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\* Eleven months only



# Defendants' Exhibit 16.

## PPG Schedule of Net Prices to Furniture Manufacturer Customers.

December 31, 1955

PHP-133

### MIRROR PRICES TO BE USED FOR FURNITURE

#### MANUFACTURERS ONLY.

PITTSBURGH

PLATE GLASS COMPANY

*Glass Manual*

April 25, 1950 List, Plus Fabrication

Sizes	Plain Mirrors 77%	Actual Inches Aloxite 1/2" Inch	1/2" Bevel Actual Inches 1" Inch	3/4" Bevel Actual Inches 1 1/4" Inch	1" Bevel Actual Inches 2" Inch	1/4" Holes 5¢ Each
12 x 14.....	\$ 1.01					
12 x 16.....	1.16					
12 x 20.....	1.40					
12 x 24.....	1.68					
14 x 14.....	1.18					
14 x 16.....	1.31					
14 x 20.....	1.63					
14 x 30.....	2.69					
14 x 34.....	3.06					
16 x 16.....	1.50					
16 x 18.....	1.68					
16 x 20.....	1.84					
18 x 20.....	2.07					
18 x 24.....	2.77					
18 x 26.....	3.00					
20 x 28.....	3.60					
20 x 30.....	3.85					
22 x 28.....	3.96					
24 x 28.....	4.31					
24 x 30.....	4.62					
26 x 32.....	5.50					
26 x 34.....	5.84					
26 x 36.....	6.19					
26 x 40.....	7.18					
28 x 30.....	5.55					
28 x 38.....	7.34					
28 x 40.....	7.73					
28 x 42.....	8.12					
28 x 44.....	8.50					
30 x 40.....	8.28					
30 x 42.....	8.69					
30 x 44.....	9.11					
30 x 46.....	9.52					
30 x 56.....	12.56					
32 x 40.....	8.83					
32 x 42.....	9.27					
32 x 44.....	9.72					
32 x 46.....	11.01					
32 x 50.....	11.96					
32 x 56.....	13.40					
32 x 58.....	13.87					
34 x 50.....	12.71					

REASON FOR CHANGE TO RECOVER INCREASED COST OF PLATE GLASS  
DATED JUNE 30, 1955



*Defendants' Exhibit 16.*

December 31, 1955

PHP-134

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**CARO-CRAFT**  
**ROCKY MOUNT, N. C.**

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>	<u>Alox. 1/4"</u>	<u>Total</u>
28 x 40	\$7.73		
34 x 40	9.38	\$ .54 1 long, 2 short alox.—	\$9.92

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.

*Defendants' Exhibit 16.*

December 31, 1955

PHP-135

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**CRAFTIQUE, INC.**  
**MEBANE, N. C.**

<u>Sizes</u>	<u>3-1-50</u> <u>List 80%</u> <u>P. Plate</u>	<u>Bevel</u> <u>1" 2¢</u>	<u>Total</u>
13½ x 29-11/16	\$2.03	\$1.76	\$3.79
14¾ x 29-11/16	2.32	1.84	\$4.16
8-11/16 x 29-11/16	1.22	1.60	2.82

<u>Sizes</u>	<u>4-25-50</u> <u>List 77%</u> <u>Mirrors</u>
12 x 14	\$1.01
18 x 26	3.00
28 x 44	\$8.50

**WINDOW GLASS**

<u>Sizes</u>	<u>2-1-50</u> <u>List 81%</u> <u>Window</u> <u>Glass</u>
6 x 12 Each	7¢
8 x 8 Each	7¢
8 x 10 Each	8¢
8 x 14 Each	11¢

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.

*Defendants' Exhibit 16.*

December 31, 1955

PHP-136

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**B. F. HUNTLEY FURNITURE COMPANY**  
**WINSTON-SALEM, N. C.**

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>	<u>Per Lineal Inch Figure Actual Inches</u>			<u>Price Each Holes</u>	<u>Total</u>
		<u>Alox. 1/2¢</u>	<u>Bevel 1/2" 1¢</u>	<u>Bevel 3/4" 1 1/2¢</u>	<u>Bevel 1" 2¢</u>	

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.

**Defendants' Exhibit 24.**

**PPG Summary of the Prices of All Shipments to Listed Furniture Customers Made on and After November 1, 1954, to End of Month, Showing Sales at 78 (\$12,769.49) and at 80 (\$12,697.51).**

**NOVEMBER 1954 ORDERS FROM HIGH POINT**

<u>Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 2-54	80	White	\$ 7,974.35
11- 9-54	80	Huntley	10.80
11-10-54	78	Sanford	12,459.05
11-18-54	78	Sanford	198.90
11-22-54	78	Jordan	111.54
11-29-54	80	Huntley	322.56
11-30-54	80	Huntley	4,389.80
<u>Total—November, 1954</u>			<u>\$25,467.00</u>

**Summary:**

Sales of November 1954 orders at 78%	\$12,769.49	50.14%
Sales of November 1954 orders at 80%	12,697.51	49.86
<u>Total—November, 1954</u>	<u>\$25,467.00</u>	<u>100.00%</u>

*Defendants' Exhibit 16.*

December 31, 1955

PHP-137

**PITTSBURGH  
PLATE GLASS COMPANY***Glass Manual***JORDAN FURNITURE COMPANY,  
WINSTON-SALEM, N. C.**Sizes31 x 43  
28 x 36  
28 x 464-25-50  
List 77%  
Mirrors\$9.72  
6.67  
8.89**REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATEGLASS DATED JUNE 30, 1955.**



*Defendants' Exhibit 16.*

December 31, 1955

PHP-138

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

Ton Dorsey 3790

**KEMP FURNITURE SPECIALTY COMPANY**  
**GOLDSBORO, N. C.**

<u>Size</u>	<u>4-25-50 List 77% Mirrors</u>
18 x 24	\$2.77
26 x 32	5.50

## Window Glass Mirrors

<u>Size</u>	<u>Price</u>
18 x 24 D. S. B.	\$ .99
32 x 26 D. S. B.	\$1.88

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.

670

*Defendants' Exhibit 16.*

December 31, 1955

PHP-139

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**LANDSTROM FURNITURE CORPORATION**  
**ROCKFORD, ILL.**

**CARYSBROOK REPRODUCTION FURNITURE COMPANY**  
**CARYSBROOK, VIRGINIA**

Sizes

28 x 38

4-25-50  
List 77%  
Mirrors

\$7.34

**REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATE GLASS DATED JUNE 30, 1955.**

671

*Defendants' Exhibit 16.*

December 31, 1955

PHP-140

PITTSBURGH  
PLATE GLASS COMPANY

*Glass Manual*

LUCAS NATIONAL, INC.,  
ASHEBORO, N. C.

MR. COLE

Phone 2105

Sizes

4-25-50  
List 77%  
Mirrors

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATE GLASS DATED JUNE 30, 1955.

*Defendants' Exhibit 16.*

December 31, 1955

PHP-141

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**MULLINS LUMBER COMPANY**  
**MULLINS, S. C.**

(SCHOOLFIELD INDUSTRIES)

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>	<u>Per Linear Inch Figure Actual Inches</u>		<u>Price Each Holes 1/4" 5¢</u>	<u>Totals</u>
		<u>Alox. 1/2¢</u>	<u>Bevels 1/2" 1¢</u>		
12 3/4 x 16	\$1.31	\$ .30		\$ .20	\$1.81
14 x 16	1.31	.30		.20	1.81
18 x 26	3.00				
20 x 28	3.60				
26 x 34	5.84				
28 x 30	5.55	.58			6.13
28 x 38	7.34	.66			8.00
30 x 40	8.28				
23 x 23	3.70				
23 x 46	7.61				
46 x 46	15.81				

**REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.**

673

*Defendants' Exhibit 16.*

December 31, 1955

PHP-142

**PITTSBURGH**  
PLATE GLASS COMPANY

*Glass Manual*

PINECROFT INDUSTRIES, INC.  
HAMLET, N. C.

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>
30 x 44	\$9.11

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATE GLASS DATED JUNE 30, 1955.



*Defendants' Exhibit 16.*

December 31, 1955

PHP-143

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**SANDHILL FURNITURE CORPORATION**  
**WEST END, N. C.**

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>	<u>Bevels <math>\frac{1}{8}</math>" 1¢ per Lineal Inch</u>	<u>Total</u>
22 x 28	\$3.96		
28 x 38	7.34		
28 x 40	7.73		
28 x 44	8.50	\$1.00 1 long and 2 shorts beveled.	\$9.50
30 x 40	8.28		
30 x 46	9.52		
28 x 36	6.67		

For WINDOW GLASS or HEAVY SHEET MIRRORS, Refer  
to June 1, 1954 Schedule

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATE GLASS DATED JUNE 30, 1955.

*Defendants' Exhibit 16.*

December 31, 1955

PHP-144

**PITTSBURGH**  
**PLATE GLASS COMPANY**

*Glass Manual*

**SANFORD FURNITURE COMPANY**  
**SANFORD, N. C.**

<u>Sizes</u>	<u>4-25-50 List 77% Mirrors</u>	<u>Per Lineal Inch Figure Actual Inches</u>			<u>Price Each Holes 1/4" 5¢</u>	<u>Total</u>
		<u>Alox. 1/2¢</u>	<u>Bevels 3/4" 1¢</u>	<u>Bevels 3/4" 1 1/2¢</u>		
12 x 16	\$1.16			\$ .84		\$2.00
14 x 16	1.31	\$ .30			\$ .20	1.81
16 x 20	1.84					
20 x 28	3.60					
22 x 28	3.96					
28 x 42	8.12					
30 x 44	9.11					
30 x 48	9.94					

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
 PLATE GLASS DATED JUNE 30, 1955.

*Defendants' Exhibit 16.*

December 31, 1955

PHP-145

PITTSBURGH  
PLATE GLASS COMPANY

*Glass Manual*

WHITE FURNITURE COMPANY,  
MEBANE, N. C.

Sizes	4-25-50 List 77% Mirrors	3-1-50 List 80% P. Plate	Per Lineal Inch Figure Actual Inches			Price Each 1/4" Holes 5¢	Total
			Alox. 1/4¢	Bevel 1" 2¢	Bevel 1 1/4" 2¢		
11 1/4 x 23 3/4	\$ 1.68		\$ .36			\$ .20	\$2.24
12 3/4 x 33 5/8		\$2.30			\$1.92		\$4.22
16 7/8 x 18	\$ 1.86		\$ .36			\$ .20	\$2.42
22 x 28	\$ 3.96						
24 x 28	\$ 4.31						
30 x 40	\$ 8.28						
30 x 44	\$ 9.11						
32 x 42	\$ 9.27						
32 x 44	\$ 9.72						
32 x 46	\$11.01						
32 x 50	\$11.96						
32 x 56	\$13.40						
32 x 58	\$13.87						

WINDOW GLASS

List dated 2/1/50—Less 83%, Boxes and Lights.

REASON FOR CHANGE TO RECOVER INCREASED COST OF  
PLATE GLASS DATED JUNE 30, 1955.

## Defendants' Exhibit 34.

**Schedule Showing Discounts Off List at Which Each Corporate Defendant Sold Plate Glass Mirrors to Named Customers on Orders Received of Them During Month of November 1954, and the Dollar Amount of Each Sale.**

### CAROLINA DETAIL LISTING OF PLAIN PLATE GLASS MIRROR ORDERS

Month of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 1-54	80-2	Henredon	\$1,701.00
11- 1-54	80-2	Henredon	1,800.00
11- 1-54	81 & 2-0*	Lenoir Furniture	7,200.00 F
11- 2-54	78 & 10-5	National	314.09 F
11- 2-54	78 & 10-5	National	808.17
11- 2-54	78 & 10-5	National	910.24
11- 2-54	78 & 10-5	National	230.66
11- 2-54	78 & 10-5	National	595.00
11- 2-54	78 & 10-5	National	4,101.74
11- 2-54	80-2	Furniture Ind.	533.40
11- 3-54	80-2	Henredon	1,440.00
11- 4-54	80-2	Mengel	2,116.80
11- 4-54	80-2	Mengel	125.20
11- 4-54	80-2	Harper	61.75 F
11- 4-54	80-2	Harper	67.40 F
11- 5-54	79-5	American	427.36 F
11- 5-54	79-5	American	1,331.01 F
11- 5-54	79-5	American	1,167.90 F
11- 5-54	79-5	American	254.50 F
11- 5-54	79-5	American	221.83 F
11- 5-54	79-5	American	888.37 F
11- 5-54	79-5	American	389.30 F
11- 5-54	80-2	Drexel	2,721.60
11- 6-54	80-2	Southland	372.50 F
11- 6-54	80-2	Southland	685.00 F
11- 6-54	80-2	Cochrane	672.00
11- 8-54	78 & 10-2*	Vaughn-Bassett	632.00 F
11- 9-54	78 & 5 & 3 & 5-0*	Vaughn	1,826.34 F
11-10-54	78-2*	Cavalier	1,422.90 F
11-10-54	78-2*	Cavalier	3,019.50 F
11-10-54	80-2	Cavalier	8,967.60 F
11-10-54	80-2	Cavalier	3,951.15 F
11-10-54	80-2	Caldwell	1,568.00 F
11-10-54	80 & 5-2	Caldwell	5,740.00 F
11-10-54	80 & 2	Caldwell	1,568.00 F
11-10-54	80 & 5-2	Caldwell	5,740.00 F
11-10-54	80-2	Caldwell	1,634.50 F
11-10-54	80-2	Caldwell	6,006.00 F
11-10-54	80-2	Cavalier	3,704.40

(Forwarded)



*Defendants' Exhibit 34.*

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11-10-54	80-2	Cavalier	2,193.75
11-10-54	78 & 10-5	National	60.97
11-11-54	80-2	Drexel	3,780.00
11-11-54	80-2	Drexel	672.00
11-11-54	78 & 10-2*	Vaughn-Bassett	206.00 F
11-12-54	78 & 10-2	United	1,191.40 F
11-12-54	78 & 10-2	United	2,472.50 F
11-12-54	78 & 10-2	United	1,748.25 F
11-12-54	78 & 10-2	United	7,206.00 F
11-12-54	78 & 10-2	United	2,686.50 F
11-12-54	81 & 2-0	Lenoir Chair	57.60 F
11-12-54	78 & 10-2	United	1,872.50
11-12-54	78 & 10-2	United	1,282.50

Page 2

11-12-54	79-1	Brandt	\$ 253.00
11-12-54	78-1	Brandt	559.00
11-12-54	79-1	Brandt	846.00
11-12-54	80-2	Hibriten	377.00
11-12-54	80-2	Hibriten	3,780.00
11-12-54	80-2	Hibriten	1,307.90
11-12-54	80-2	Hibriten	372.60
11-15-54	78 & 10-2	Forest	1,272.00 F
11-15-54	78-2	United	84.72 F
11-15-54	80-2	Mengel	1,293.25
11-15-54	80-2	Mengel	806.00
11-16-54	80-2	Drexel	3,695.00
11-17-54	80-2	Kemp	2,868.00
11-18-54	80-2	Drexel	3,920.40
11-18-54	80-2	Mengel	1,148.40
11-18-54	80-2	Mengel	1,059.00
11-18-54	81 & 2-0*	Harper	4,295.00 F
11-19-54	78 & 5 & 3 & 5-0*	Vaughn	1,645.00 F
11-19-54	79-2	Caldwell	225.50 F
11-19-54	80-2	Caldwell	294.30 F
11-22-54	80-2	Drexel	268.80 F
11-22-54	80-2	Drexel	2,691.00
11-23-54	81 & 2-0*	Lenoir Chair	3,945.00 F
11-23-54	81 & 2-0*	Lenoir Chair	3,672.00 F
11-23-54	80-2	White	140.66
11-23-54	80-2	White	98.28
11-24-54	78-2	Sandhill	1,053.00
11-24-54	78-2	Sandhill	567.00
11-24-54	78 & 10-2	United	72.06 F
11-26-54	79-5	American	897.25 F
11-26-54	79-5	American	1,419.74 F
11-26-54	79-5	American	661.81 F
11-26-54	79-5	American	193.39 F
11-26-54	78 & 10-5	National	224.35 F
11-26-54	78-2	Forest	52.92 F
11-26-54	78-2	Forest	54.72 F
11-26-54	78-2	Forest	62.40 F
11-26-54	78-2	Forest	65.64 F

(Forwarded)



*Defendants' Exhibit 34.*

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11-26-54	78-2	Vermont	3,087.00
11-26-54	78-2	Vermont	1,134.00
11-26-54	78-2	Vermont	1,276.00
11-26-54	78 & 10-5	National	279.03
11-26-54	78 & 10-5	National	85.95
11-26-54	78 & 10-5	National	2,160.45
11-26-54	78 & 10-5	National	177.42
11-26-54	78 & 10-5	National	2,511.27
11-26-54	78 & 10-5	National	1,337.79
11-26-54	78 & 10-5	National	1,167.44
11-26-54	78 & 10-5	National	113.45
11-26-54	78 & 10-5	National	1,092.28

Page 3

11-29-54	81 & 2-0	Harper	\$ 448.00
11-29-54	81 & 2-0	Harper	56.00
11-29-54	81 & 2-0	Harper	2,010.00
11-29-54	80-2	Table Rock	1,467.40
11-29-54	80-2	Table Rock	1,977.80
11-29-54	80-2	Table Rock	4,140.00
11-29-54	80-2	Table Rock	1,663.20
11-29-54	80-2	Table Rock	1,587.60
11-29-54	78-2	Sandhill	656.25 F
11-29-54	79-0*	Lenoir Chair	107.28 F
11-29-54	78-2	Furniture Ind.	73.00 F
11-29-54	78-2	Furniture Ind.	208.75 F
11-30-54	80-2	Harper	8,470.00 F
11-30-54	78 & 10-2*	Vaughn-Bassett	206.00 F
11-30-54	78-2	Forest	51.90 F
11-30-54	78-2	Forest	61.14 F
11-30-54	80-2	Table Rock	3,152.16
11-30-54	78-2	Mt. Airy Furniture	126.40
11-30-54	78-2	Mt. Airy Furniture	90.30

NOTES:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. Discounts above followed by an asterisk (\*) denote plain plate glass mirror orders, with fabrication, for which part or all of the announced fabrication price was not charged.
3. The above listing does not include orders on which prices were based on factors other than a discount off list as follows:

<u>Company</u>	<u>Basis of Pricing</u>	<u>Cash Discount</u>	<u>Amount</u>
Imperial	78% off list plus 11¢ to 15¢ per sq. foot	1%	\$2,924.00
Calif. Furn. Shops	77 & 1% off list plus 11¢ to 14¢ per sq. foot	1%	1,614.00
	<u>Total</u>		<u>\$4,538.00</u>

*Defendants' Exhibit 34.*GALAX.DETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERSMonth of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 1-54	78-2	Huntley	\$4,692.65
11- 1-54	78-2	Huntley	4,504.02
11- 1-54	78-2	Carroll	4,577.00 F
11- 1-54	78-2	Carroll	742.40 F
11- 1-54	78-2	Carroll	4,395.65 F
11- 1-54	78-2	Carroll	3,651.84 F
11- 1-54	78-5	Carroll	2,818.63 F
11- 1-54	78-5	Carroll	1,449.57 F
11- 1-54	78-2*	Camden	80.30 F
11- 1-54	78-2*	Camden	88.70 F
11- 1-54	78 & 10-2	Webb	582.80 F
11- 1-54	78-2	Webb	1,465.88 F
11- 1-54	78-2	Webb	2,366.64 F
11- 1-54	78-2	Webb	858.80 F
11- 1-54	78-5	Webb	220.61 F
11- 1-54	78-5	Webb	579.90 F
11- 1-54	78-5	Webb	359.71 F
11- 1-54	78-5	Webb	426.90 F
11- 1-54	78-5	Webb	120.57 F
11- 1-54	80 & 10-2	Huntley	4,183.70 F
11- 1-54	78-2*	Huntley	370.50 F
11- 2-54	78-5	Stanley	5,247.70 F
11- 2-54	78-5	Stanley	7,846.76 F
11- 2-54	78-2	Wytheville	318.75
11- 2-54	78-2	Wytheville	491.04
11- 4-54	78 & 10-2*	American	3,348.00 F
11- 4-54	78 & 10-2*	American	3,675.00 F
11- 4-54	78 & 10-2*	American	2,188.00 F
11- 4-54	78 & 10-2*	American	4,068.28 F
11- 4-54	78-5	Stanley	2,099.08 F
11- 8-54	78 & 10-2*	American	1,698.00 F
11- 8-54	78-2	Lea	776.00
11- 8-54	78-2	Lea	530.00
11- 9-54	80 & 10-2	Huntley	3,233.80 F
11-10-54	78-2	Chicago Table	684.00 F
11-10-54	78-2	Chicago Table	538.00 F
11-10-54	78-2	Chicago Table	842.00 F
11-10-54	78-2	Chicago Table	1,094.00
11-11-54	78-2	Camden	80.28 F

(Forwarded)

*Defendants' Exhibit 34.*

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11-11-54	78-2	Camden	87.75 F
11-12-54	78 & 10-2*	American	118.86 F
11-12-54	78 & 10-2*	American	452.48 F
11-15-54	78-2	Lincoln	2,314.99 F
11-15-54	78-2	Lincoln	932.00 F
11-15-54	78-2	Coburn	287.00
11-18-54	78-5	Carroll	842.56 F
11-18-54	78-2	Carroll	1,273.60 F
11-19-54	80 & 10-2	Huntley	5,446.40 F
11-22-54	78-2	Coburn	126.50
11-22-54	78-2	Coburn	148.00

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11-23-54	78-2	Hampton	\$ 101.66
11-24-54	78-2	Colony	50.64
11-24-54	78-2	Colony	97.20
11-24-54	78-2	Colony	103.68
11-24-54	78-2	Colony	97.20
11-24-54	78-2	Colony	103.68
11-24-54	78-2	Colony	50.64
11-30-54	78-2	Camden	46.60 F
11-30-54	78-2	Camden	50.95 F
11-30-54	78-2	Camden	34.35 F
11-30-54	78-5	Webb	2,229.29 F
11-30-54	78-5	Webb	4,357.53 F

Notes:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. Discounts above followed by an asterick (\*) denote plain plate glass mirror orders, with fabrication; for which part or all of the announced fabrication price was not charged.
3. The above listing does not include orders for which the exact date was undetermined.

*Defendants' Exhibit 34.*MOUNT AIRYDETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERSMonth of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 1-54	78-5	Mt. Airy Furniture	\$ 18.33
11- 2-54	78-2	Florida	502.00 F
11- 2-54	78-2	Florida	575.00 F
11- 2-54	78-2	Florida	1,498.00 F
11- 2-54	78 & 10-5	National	60.97 F
11- 2-54	78-5	National	103.52 F
11- 3-54	78-5	Mt. Airy Furniture	30.90
11- 5-54	78-5	Mt. Airy Furniture	28.71
11- 9-54	78-5	Mt. Airy Furniture	54.42 F
11-10-54	78-2	Mt. Airy Furniture	76.00
11-12-54	78-2	Mt. Airy Furniture	100.35
11-16-54	78-5	Mt. Airy Mantle	643.60
11-16-54	78-5	Mt. Airy Mantle	441.64
11-16-54	78-5	Mt. Airy Mantle	358.41
11-17-54	78-2	Mt. Airy Furniture	106.20
11-20-54	78-5	United	135.37 F
11-26-54	78-2	Empire	270.60 F
11-26-54	78-2	Empire	15.60
11-26-54	78-2	Empire	73.90
11-26-54	78-2	Empire	354.80
11-26-54	78-2	Empire	52.05
11-26-54	78-2	Empire	95.00
11-27-54	78-2	Florida	892.00 F
11-30-54	78-2	Bienville	5,967.00

Notes:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. The above listing does not include orders for which the exact date was undetermined.



*Defendants' Exhibit 34.*PPG—ROANOKEDETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERSMonth of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 8-54	80-1	Lea	\$ 720.00
11- 8-54	80-1	Lea	3,136.00
11- 8-54	80-1	Lea	1,232.00
11- 8-54	80-1	Lea	2,900.00



*Defendants' Exhibit 34.*PPG—HIGH POINTDETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERSMonth of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 2-54	80-2	White	\$3,049.20
11- 2-54	80-2	White	223.60
11- 2-54	80-2	White	150.00
11- 2-54	80-2	White	1,579.05
11- 2-54	80-2	White	2,912.50
11- 2-54	80-2	White	60.00
11- 9-54	80-2	Huntley	10.80 F
11-10-54	78-2	Sanford	7,795.45
11-10-54	78-2	Sanford	395.60
11-10-54	78-2	Sanford	4,268.00
11-18-54	78-2	Sanford	198.90 F
11-22-54	78-0	Jordan	111.54
11-29-54	80-2	Huntley	322.56 F
11-30-54	80-2	Huntley	4,389.80 F

Notes:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. The above listing does not include orders for which the exact date was undetermined.

*Defendants' Exhibit 34.***STROUPE****DETAIL LISTING OF PLAIN PLATE GLASS**  
**MIRROR ORDERS****Month of November, 1954**

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 1-54	80-2	Huntley	\$ 2,895.40 F
11- 1-54	80-2	Huntley	3,861.00 F
11- 2 54	78-2	Lucas	945.52 F
11- 2 54	78-2	Lucas	383.56 F
11- 2-54	80-2	Sumter	1,318.05
11- 2-54	80-2	Sumter	4,407.68
11- 3-54	80-2	Williams	1,878.00
11- 3-54	80-2	Williams	10,080.00
11- 3-43	80-2	Williams	3,317.40
11- 8-54	80-2	Williams	1,114.92
11- 8-54	78-2	Lucas	3,071.25 F
11- 9-54	78-2	Huntley	142.20 F
11- 9-54	78-2	Huntley	1,773.60
11- 9-54	78-2	Huntley	1,190.00
11-15-54	78-2	Sumter	861.00
11-15-54	78-2	Sumter	1,875.00
11-19-54	78-2	Williams	1,980.00
11-19-54	78-2	Williams	2,808.00
11-19-54	78-2	Williams	1,951.75
11-19-54	78-2	Williams	1,186.80
11-17-54	78-2	Lucas	6,511.00 F
11-17-54	78-2	Lucas	195.00 F
11-17-54	78-2	Lucas	1,079.32 F
11-17-54	78-2	Lucas	2,949.30 F
11-17-54	78-2	Lucas	140.10 F
11-17-54	78-2	Lucas	2,516.00 F
11-17-54	78-2	Ramseur	244.00 F
11-17-54	78-2	Ramseur	870.48 F
11-24-54	78-2	Lucas	107.04 F

Note:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.

*Defendants' Exhibit 34.*WEAVERDETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERSMonth of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 2-54	80-5	Stanley	\$ 656.82 F
11- 2-54	80-5	Stanley	4,578.72 F
11- 2-54	80-5	Stanley	8,745.20 F
11-12-54	78-2	Bald Knob	1,183.00 F
11-12-54	78-2	Bald Knob	2,340.00 F
11-18-54	78-5	Stanley	354.53 F

Notes:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. The above listing does not include orders for which the exact date was undetermined.

*Defendants' Exhibit 34.*VIRGINIADETAIL LISTING OF PLAIN PLATE GLASS  
MIRROR ORDERS

Month of November, 1954

<u>Order Date</u>	<u>Discount</u>	<u>Customer</u>	<u>Amount</u>
11- 4-54	80-7	Hooker	\$5,116.68 F
11- 4-54	78-2	Empire	624.50
11- 4-54	78-2	Empire	40.50
11- 4-54	80-7	Hooker	526.68
11- 4-54	80-7	Hooker	150.48
11- 5-54	79 & 10 & 10-2	American	1,348.00
11- 5-54	79-2	Willett	249.60
11- 5-54	79-2	Willett	83.20
11- 8-54	79 & 10 & 10-2*	American	47.75 F
11- 8-54	79-2	Willett	1,482.00
11- 8-54	79-2	Willett	212.00
11- 8-54	79-2	Willett	1,588.00
11- 8-54	79-2	Willett	2,749.50
11- 9-54	79 & 10 & 10-2*	American	354.00 F
11- 9-54	79-2	Willett	180.50
11- 9-54	79-2	Willett	590.80
11- 9-54	79-2	Willett	2,471.00
11- 9-54	79-2	Willett	2,037.75
11- 9-54	79-2	Willett	253.20
11- 9-54	79-2	Willett	928.00
11- 9-54	79-2	Willett	252.00
11- 9-54	79-2	Willett	1,172.50
11- 9-54	79-2	Willett	1,766.10
11- 9-54	79-2	Willett	120.00
11- 9-54	79-2	Willett	2,326.50
11- 9-54	78-2	Willett	707.20
11- 9-54	79 & 10 & 10-2	American	2,022.00
11-12-54	82-2	Empire	665.00
11-19-54	79 & 10 & 10-2*	American	334.00 F
11-26-54	79 & 10 & 10-2*	American	9,352.00 F

Notes:

1. Amounts above followed by "F" denote plain plate glass mirror orders, with fabrication.
2. Discounts above followed by an asterisk (\*) denote plain plate glass mirror orders, with fabrication, for which part or all of the announced fabrication price was not charged.
3. Dates of acknowledgements were used for order dates for Virginia Mirror Company.
4. The above listing does not include orders on which the prices were based on factors other than a discount off list as follows:

(Forwarded)

*Defendants' Exhibit 34.*Page 2

<u>Company</u>	<u>Basis of Pricing</u>	<u>Cash Discount</u>	<u>Amount</u>
John	89¢ sq. ft.	1%	\$ 37.10
John	89¢ or 92¢ sq. ft.	1%	7,838.75 F
Harmon	80 & 10% off list W/Frt. billing separately	2%	11,797.05 F
Morris	78% off list W/Frt. billing separately	2%	3,318.00 F
Sandberg	80 & 3 & 2% W/Frt. billing separately	2%	19,092.00 F
Talney	Undetermined	2%	4,000.00 F
Vaughn	Undetermined	2%	5,869.50 F
	<u>Total</u>		<u><u>\$51,952.40</u></u>



### Defendants' Exhibit 35.

**Schedule Showing Dollar Volume of Sales for Each Corporate Defendant Made Above (\$670.54), at (\$121,917.70), and Below (\$335,627.38) Announced Discount.**

**SCHEDULE OF DOLLAR VOLUME OF PLAIN PLATE GLASS MIRROR ORDERS ABOVE ANNOUNCED PRICES, AT ANNOUNCED PRICES, AND BELOW ANNOUNCED PRICES BY DEFENDANT COMPANY**

**For the Month of November, 1954**

**Relation of Order Prices to Announced Prices**

<u>Company</u>	<u>Above</u>	<u>At</u>	<u>Below</u>	<u>Undetermined</u>	<u>Total</u>
PPG-R		\$ 7,988.00			\$ 7,988.00
PPG-HP	\$ 111.54	12,572.61	\$ 12,697.51		25,381.66
Galax		42,355.93	58,915.77		101,271.70
Mt. Airy		10,578.20	2,126.75		12,704.95
Weaver		5,564.70	14,335.27		19,899.97
Stroupe		32,780.92	28,872.45		61,653.37
Carolina	559.00	8,705.14	180,300.39	\$ 4,538.00	194,102.53
Virginia		1,372.20	38,379.24	51,952.40	91,703.84
<u>Total</u>	<u>\$ 670.54</u>	<u>\$121,917.70</u>	<u>\$335,627.38</u>	<u>\$56,490.40</u>	<u>\$514,706.02</u>

**Note :**

1. Amounts shown above as "Undetermined" were orders on which the price was based on factors other than a discount off list.
2. Dates of acknowledgements have been used for order dates for Virginia Mirror Company.

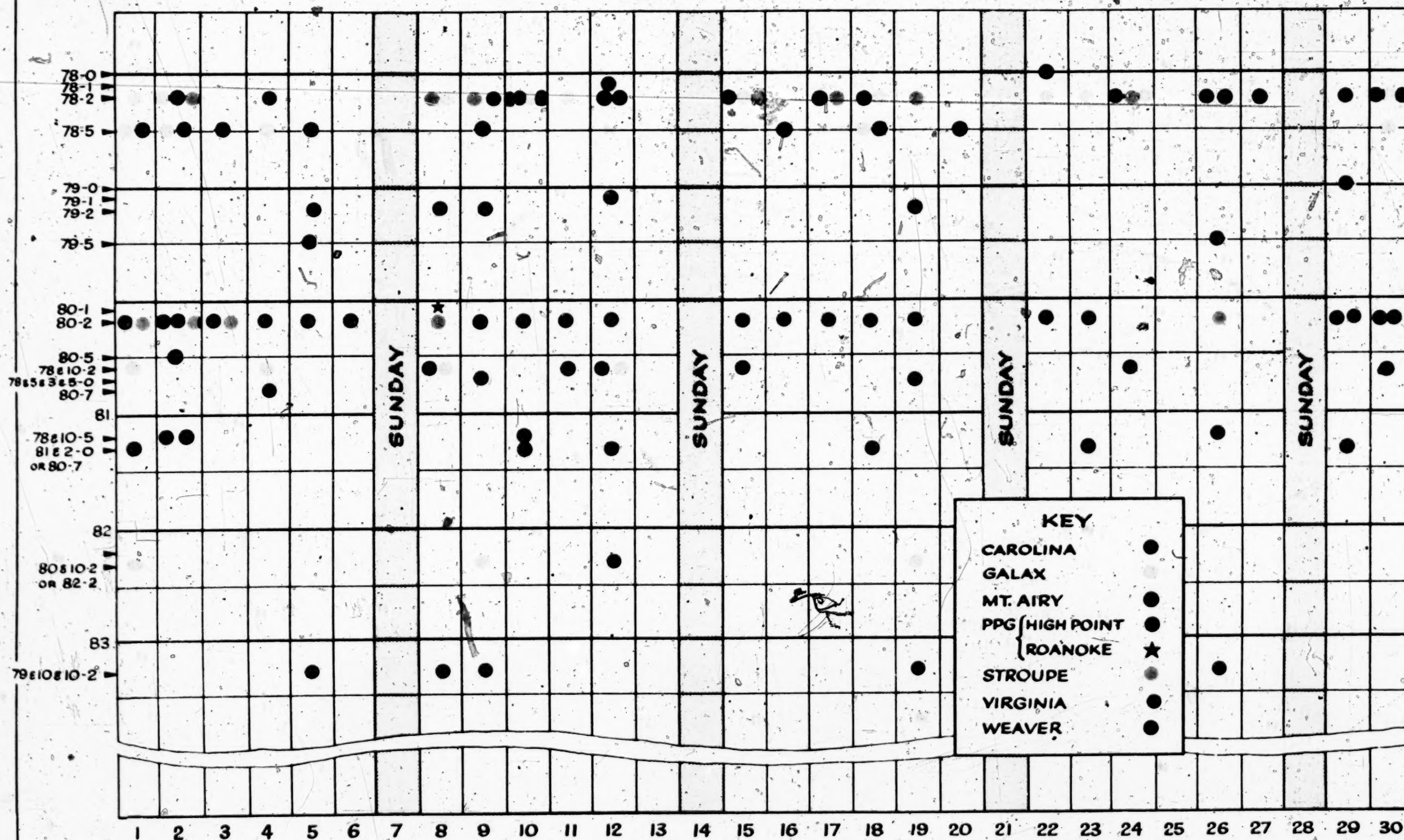
### Defendants' Exhibit 36.

**Chart Recapitulating Information Contained on Schedule Admitted in Evidence as Defense Exhibit 34.**

(Opposite ).

# DISCOUNTS OFF LISTS ON ORDERS RECEIVED FROM FURNITURE MANUFACTURERS BY DEFENDANT COMPANIES NOVEMBER 1954

DISCOUNTS  
OFF LISTS



## KEY

CAROLINA  
GALAX  
MT. AIRY  
PPG { HIGH POINT  
ROANOKE  
STROUPE  
VIRGINIA  
WEAVER



**Indictment.****UNITED STATES DISTRICT COURT,****WESTERN DISTRICT OF VIRGINIA.****UNITED STATES OF AMERICA,****v.**

**PITTSBURGH PLATE GLASS COMPANY;  
 CAROLINA MIRROR CORPORATION;  
 GALAX MIRROR COMPANY, INCORPORATED;  
 MOUNT AIRY MIRROR COMPANY;  
 STROUPE MIRROR COMPANY;  
 VIRGINIA MIRROR COMPANY, INCORPORATED;  
 WEAVER MIRROR COMPANY, INCORPORATED;  
 EDD F. GARDNER; J. A. MESSER, SR. and W. A. GORDON.**

**CRIMINAL ACTION**

No.....

(15 U. S. C. Sec. 1)

Filed:

**The Grand Jury charges:****I.****DEFENDANTS.**

1. Pittsburgh Plate Glass Company (hereinafter sometimes referred to as PPG) is hereby indicted and made a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of Pennsylvania with offices and principal place of business in Pittsburgh, Pennsylvania. It is the largest manufacturer of plate glass in the United States, and during the period covered by this indictment has been engaged in the sale of plate glass to mirror manufacturers. In addition, through various of its branches or warehouses, including its warehouse or branch located at High Point, North Carolina, said defendant is engaged and during the period

*Indictment.*

covered by this indictment has been engaged, in the manufacture and sale of plain and other plate glass mirrors.

2. Each of the corporations listed below in this paragraph is hereby indicted and made a defendant herein. Each of said corporations is engaged in the manufacture and sale of plain and other plate glass mirrors. Each of said corporations is organized and exists under the laws of the State, and each has its principal place of business, as below indicated:

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Carolina Mirror Corporation	North Carolina	North Wilkesboro, North Carolina
Galax Mirror Company, Incorporated	Virginia	Galax, Virginia
Mount Airy Mirror Company	North Carolina	Mount Airy, North Carolina
Stroupe Mirror Company	North Carolina	Thomasville, North Carolina
Virginia Mirror Company, Incorporated	Virginia	Martinsville, Virginia
Weaver Mirror Company, Incorporated	Virginia	Rocky Mount, Virginia

3. Each of the individuals listed below in this paragraph is hereby indicted and made a defendant herein. Each of said individual defendants is, and during all or part of the period covered by this indictment has been, associated with or employed by one or more of the defendant corporations, and has held or holds the official title or position with the corporation or corporations as set forth below. Each of said individual defendants, during the past five years has actively engaged in the management, direction or control of the affairs, policies, or acts of the defendant corporation with which he has been associated, and within said period of time has authorized, ordered or done some or all of the acts or things constituting the offense hereinafter charged:

*Indictment.*

<u>Name of Individual</u>	<u>Address</u>	<u>Title or Position</u>	<u>Defendant Corporation with which Associated</u>
Edd F. Gardner	North Wilkes- boro, North Carolina	President	Carolina Mirror Cor- poration
J. A. Messer, Sr.	Galax, Virginia	Chairman of the Board of Directors	Galax Mirror Com- pany, Incorporated and Mount Airy Mirror Company
W. A. Gordon	Pittsburgh, Pennsylvania	Manager of Plate Glass Sales	Pittsburgh Plate Glass Company

4. The acts alleged in this indictment to have been done by a defendant corporation were authorized, ordered or done by the officers, directors, agents or employees of that corporation, including those named as defendants in this indictment.

## II.

Co-CONSPIRATORS.

5. Mirror Manufacturers Association in Chicago, Illinois, and those manufacturers of plain plate glass mirrors located in Virginia and North Carolina, not named as defendants herein, are designated as co-conspirators. The aforesaid co-conspirators have participated in the offense hereinafter charged and have performed acts and made statements in furtherance thereof.

## III.

DEFINITIONS.

6. As used in this indictment, the term "plate glass mirrors" means mirrors made from polished plate glass,



*Indictment.*

including such mirrors with polished edges, bevelled edges, surface engravings, decorations or other fabrications.

7. As used in this indictment, the term "plain plate glass mirrors" means mirrors, made from polished plate glass, with straight, clean-cut edges, not including polished or bevelled edges, surface engravings or other surface decorations for which charges are usually added to the price of the plain plate glass mirror.

## IV.

NATURE OF TRADE AND COMMERCE INVOLVED.

8. During the period covered by this indictment, plain plate glass mirrors have been manufactured by the defendant corporations and other mirror manufacturers by the application of reflecting and protective coatings on the back of polished plate glass. Such polished plate glass is, and during said period has been, purchased by said mirror manufacturers from manufacturers of plate glass, including defendant PPG, whose plants are located in states other than those in which said mirror manufacturers are located. Other materials used in manufacturing mirrors have likewise been purchased from suppliers in states other than those in which the said mirror manufacturers are located. Various branches or warehouses of defendant PPG, including its High Point, North Carolina, branch, obtain, and during the period covered by this indictment have obtained, polished plate glass used in the manufacture of plain plate glass mirrors from PPG's plants, located in states other than those in which such branches manufacturing plate glass mirrors are located. As a consequence, polished plate glass and other materials used in manufacturing plain plate glass mirrors are, and during the period covered by this indictment have been, continuously shipped across state lines to the mirror manu-

*Indictment.*

facturing plants of defendants and other mirror manufacturers for processing and fabrication of plain plate glass mirrors. After such processing and fabrication, the mirrors are and during said period have been sold by said mirror manufacturers, including defendants, to numerous customers located in many states, and are and have been shipped in interstate commerce by said mirror manufacturers from the places and states of manufacture to customers located in many other states throughout the United States.

9. During the period covered by this indictment, mirror manufacturers have constituted a large and important interstate outlet for polished plate glass manufactured and sold by the plate glass manufacturers, including defendant PPG. The mirror manufacturers in the States of Virginia and North Carolina, sell and distribute more plate glass mirrors than the mirror manufacturers in any other area in the United States. In the States of Virginia and North Carolina are located branches of defendant PPG which manufacture and distribute plate glass mirrors, and in those states are located the plants of the remaining defendant corporations manufacturing and distributing plate glass mirrors. In 1954, out of a total number of plate glass mirrors, framed and unframed, valued at approximately \$50,000,000, f.o.b. plant, shipped by all mirror manufacturers in the United States, the mirror manufacturers in Virginia and North Carolina, including the defendant corporations, shipped such mirrors valued at approximately \$20,000,000, f.o.b. plant.

10. During the period covered by this indictment, a substantial proportion of the plate glass mirrors, including plain plate glass mirrors, manufactured by the defendant corporations has been sold to furniture manufacturers for installation in furniture. Such mirrors have been shipped across state lines in interstate commerce from the

*Indictment.*

places of manufacture to furniture manufacturers located in numerous states throughout the United States. The defendant corporations, from their mirror manufacturing plants in Virginia and North Carolina, sold plate glass mirrors to furniture manufacturers in the approximate amount of \$7,000,000 in 1954, and in the approximate amount of \$9,000,000 in 1955.

## V.

OFFENSE CHARGED.

11. Beginning in or about October 1954, or prior thereto, the exact date being to the grand jurors unknown, and continuing thereafter, the defendants, the co-conspirators and others to the grand jurors unknown, have been engaged in a combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in plain plate glass mirrors, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, 26 Stat 209, commonly known as the Sherman Act (15 U. S. C. Section 1).

12. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, co-conspirators, and others to the grand jurors unknown, the substantial term of which has been that they agree to stabilize and fix prices for the sale by defendant corporations and co-conspirator mirror manufacturers of plain plate glass mirrors to furniture manufacturers by the following means and methods:

(a) By agreeing upon and using identical list prices covering a range of over two thousand sizes



*Indictment.*

of plain plate glass mirrors as a base for the quotation of prices for such mirrors; and

(b) By agreeing upon and applying in pricing plain plate glass mirrors a uniform discount from said list prices, the amount of which discount, from time to time, has been changed by agreement among the defendants and the co-conspirator mirror manufacturers.

13. During the period of time covered by this indictment and for the purpose of effectuating and carrying out the aforesaid combination and conspiracy, the defendants by agreement, understanding and concert of action have done the things which are hereinabove charged they conspired and agreed to do.

**VI.****EFFECTS.**

14. The effects of the combination and conspiracy hereinabove charged, among other things, have been:

(a) To suppress price competition in the sale and distribution in interstate commerce of plain plate glass mirrors to furniture manufacturers; and

(b) To deprive furniture manufacturers of free and open competition in the purchase of plain plate glass mirrors.

*Indictment.*

## VII.

JURISDICTION AND VENUE.

15. The combination and conspiracy herein charged has been carried out in part within the Western District of Virginia and within the jurisdiction of this Court. During the period of time covered by this indictment and within the past five years, the defendants have performed within the Western District of Virginia some of the acts in furtherance of the combination and conspiracy charged in this indictment.

Dated: March 26, 1957.

A TRUE BILL:

/s/ GEORGE J. HENEERY

Foreman

/s/ VICTOR R. HANSEN

VICTOR R. HANSEN

Assistant Attorney General

/s/ JOHN STRICKLER

JOHN STRICKLER

United States Attorney

/s/ SAMUEL KARP

SAMUEL KARP

/s/ ROBERT BROWN, JR.

ROBERT BROWN, JR.

Attorneys, Department of  
Justice



### **Defendants' Requests for Charge.**

1. "While there is a general principle of law that the declarations of a co-conspirator, or of a conspirator, are admissible against his co-conspirator, it is not permitted to prove participation in a conspiracy of one person by the mere uncorroborated statement of another that the said person was a conspirator. In other words, 'A' in confessing his own part of the crime, could not involve somebody else by trying to draw the other in on the strength of his own statement. The statements of conspirators are admissible against each other as to acts done in pursuance of the conspiracy, when you are satisfied that a conspiracy existed. But membership or participation in that conspiracy cannot be inferred or taken as proven from a mere declaration of one of the co-conspirators without corroboration and without separate proof of the existence of the conspiracy."

(Excerpt from the Court's charge in the Franklin County Liquor Conspiracy Case)

1(a) The court charges the jury that the defendants, and each of them, are presumed to be innocent, and this presumption of innocence carries throughout the trial. In order to convict a defendant in this case, the burden is on the government to prove beyond a reasonable doubt that he or it conspired or agreed with one or more persons or corporations to fix prices of plain plate glass mirrors to furniture manufacturers in unreasonable restraint of interstate trade and commerce by agreeing upon or applying a uniform discount from the 1950 list prices. If the government has failed to meet this burden as to any defendant, then you should find that defendant not guilty.

1(a)(a) You may find the defendants guilty only if you find beyond a reasonable doubt that defendants have entered into a continuing agreement, the substantial term of which has been that they have agreed to stabilize and fix prices for the sale by them and co-conspirator mirror manufacturers of plain plate glass mirrors to furniture manufacturers by both of the following means and methods:

*Defendants' Requests for Charge.*

(A) By agreeing upon and using identical list prices; and

(B) By agreeing upon and applying in pricing plain glass mirrors a uniform discount from said list prices, the amount of which discount, from time to time, has been changed by agreement among the defendants and the co-conspirator mirror manufacturers.

1(b) If you find that any one or more of the defendants did not enter into the alleged agreement to fix prices, you may find such defendant or defendants not guilty, irrespective of your finding as to the other defendants.

2. Before any defendant can be guilty of conspiracy, such defendant must have knowledge that a conspiracy existed, and, having such knowledge, joined therein.

See *United States v. Falcone*, 311 U. S. 205, 210 (1940)

“Those having no knowledge of the conspiracy are not conspirators, \* \* \*”

3. In deciding whether or not an agreement on price was reached among the defendants, you may take into consideration the actual prices charged by the defendants as disclosed by the evidence in this case.

“If the evidence in this case goes to show that different prices were charged, and there was free competition among these various manufacturers, all that would certainly go to indicate that there was no agreement between them. \* \* \*”

(Statement by the Court, transcript, p. 103-4)

4. You are charged that the mere discussion of price among the defendants, or any of them, is not in itself a violation of law.

*Defendants' Requests for Charge.*

5. Even if you find that the defendants desired to reach an agreement concerning prices and that they took steps leading to the formation of such a conspiracy, but that they fell short of arriving at an agreement, then the defendants have not violated the law since an attempt to conspire in restraint of trade is not unlawful.

(Section 1 of the Sherman Act, 15 U. S. C. A., Sec. 1)

6. You are charged that the gathering of information concerning the prices charged or proposed to be charged by a competitor is a legitimate trade practice and is not a violation of law.

7. You are charged that the mere fact that the defendants had the same announced price for their mirrors is not in itself a violation of law.

“We are clear that mere uniformity of prices in the sale of a standardized commodity such as milk is not in itself evidence of a violation of the Sherman Anti-Trust Act”, *Pevely Dairy Co. v. United States*, 178 F. 2d 363, 369 (8th Cir. 1949), cert. denied, 339 U. S. 942 (1950).

7(a) You are charged that mere uniformity of prices in the sale of a standardized commodity such as mirrors is not in itself a violation of the Sherman Anti-trust Act.

See *Pevely Dairy Co. v. United States*, 178 F. 2d 363, 369 (8th Cir. 1949), cert. denied, 339 U. S. 942 (1950).

8. You are charged that the mere sending by the defendants of letters on or about the same date announcing identical price quotations does not in itself constitute a violation of law.

See *Cole v. Hughes Tool Co.*, 215 F. 2d 927 (10th Cir. 1954)

9. In deciding whether the announcement of the 78 percent discount off the 1950 list was pursuant to an unlawful



*Defendants' Requests for Charge.*

agreement, you must consider whether that action was independently arrived at by the defendants as their solution, independently arrived at for common business problems which confronted all of the defendants in a competitive industry. Unless you find beyond a reasonable doubt that such action was not such an independent solution by these defendants, you must acquit them; if you find that any individual defendant took this action as such an independent action on its part, you must acquit that defendant.

9(a) In deciding whether the price quotations announced by the defendants were beyond a reasonable doubt pursuant to an unlawful agreement, you must consider whether those quotations represented as to the defendant companies a common business solution of identical problems in a competitive industry, such solution having been independently arrived at independently by each such defendant.

See *Theater Enterprises, Inc. vs. Paramount Film Distributing Corp.* 201 F. 2d 306 (4th Cir. 1953) *Aff'd*, 346 U. S. 537 (1954).

10. The Court charges the jury that the Government witness, A. G. Jonas, upon his testimony is what is known as an accomplice in this case. The Court directs the jury that the testimony of an accomplice should be received with great care and caution, and cautions the jury of the danger of convicting on the uncorroborated testimony of an accomplice.

10(a) In deciding upon the guilt or innocence of the defendant, you must take into account the fact that the only direct testimony that any of the defendants agreed to raise prices was that of Mr. A. G. Jonas. It is a general principle that in considering the credibility of co-conspirators that their testimony is open to the suspicion that it may be actuated by a self interest, and other motives, and

*Defendants' Requests for Charge.*

that it should be carefully weighed and tested before giving to it unlimited credence and that it is not safe to accept it as conclusive unless it is corroborated by the testimony of other persons or by the facts and circumstances clearly tending to support and corroborate it.

10(b) The court charges the jury that the declarations of an alleged conspirator are admissible against a co-conspirator, but a conviction cannot be based on the uncorroborated testimony of an alleged fellow conspirator. The statements of alleged conspirators are admissible against each other as to acts done in pursuance of the conspiracy when you are satisfied that a conspiracy existed, but membership or participation in that conspiracy cannot be inferred or taken as proven from a mere declaration of one of the alleged co-conspirators without corroboration and without separate proof of the existence of the conspiracy.



## Orders of the Court on Sentence.

R. p. 123

At a Regular Term of the United States District Court for the Western District of Virginia, begun and held at Roanoke, in and for said District, on the 6th day of May, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge.

UNITED STATES OF AMERICA,

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY

VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER

J. A. MESSER, SR., and

W. A. GORDON

ORDER  
Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the defendant corporations by counsel, and came also the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of several defendants was represented by counsel; and thereupon the defendants were

*Orders of the Court on Sentence.*

arraigned and upon their arraignment and being given a copy of the indictment, the Pittsburgh Plate Glass Company, Carolina Mirror Corporation, Galax Mirror Company, Inc., Mount Airy Mirror Company, Stroupe Mirror Company, Virginia Mirror Company, Incorporated, and the Weaver Mirror Company, Incorporated, the defendant corporations, each by its respective counsel, pleaded not guilty, and the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, each pleaded not guilty.

And thereupon, on motion of the United States Attorney, and without objection by the defendants, or any of them, it is

**ORDERED**

that this case be continued until the next regular term of this Court here.

*Orders of the Court on Sentence.*

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 18th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER

J. A. MESSER, SR., and

W. A. GORDON

ORDER  
Criminal Action  
No. 5790

R p. 124

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented by counsel; and thereupon, in chambers and out of the hearing of the jury, Hannibal Joyce, Esq., of counsel for Virginia Mirror Company, moved the Court to dismiss the indictment on grounds stated at length in the

*Orders of the Court on Sentence.*

transcript of the record, in which said motion counsel for each of the other defendants united, and the Court, after hearing the arguments of counsel for the defendants and for the government, upon consideration, denied said motion, to which action of the Court each of said defendants, by counsel, excepted; and thereupon, George R. Humrickhouse, Esq., of counsel for defendant Pittsburgh Plate Glass Company, moved the Court for a continuance on grounds stated at length in the transcript of the record, in which motion counsel for each of the other defendants united, and the Court, after hearing arguments of counsel for the United States and for the defendants, upon consideration, denied said motion, to which action of the Court each of said defendants, by counsel, excepted.

And thereupon each of said defendants having on May 6, 1957, been arraigned, and each having pleaded not guilty, came the following jury, to-wit:

1. Chester Akers
2. W. O. Altizer
3. Somers Bailey
4. E. E. Bradley
5. W. L. Bryant
6. Charles K. Copenhaver
7. Robert C. Dawson
8. Frank Fisher, Jr.
9. Stanley E. Hudson
10. Roy Littrell
11. John W. Martin, and
12. S. J. Martin,



*Orders of the Court on Sentence.*

who were duly elected, empanelled, tried and sworn in the manner prescribed by law; and, pursuant to provisions of law in such case made and provided, came the following alternate jurors:

1. Edward S. Brown, and
2. Robert Garland,

who were duly elected, empanelled, tried and sworn in the manner prescribed by law; and thereupon counsel for the United States and for each of said defendants made their opening statements, and the United States began the introduction of its evidence, and the hour of adjournment having been reached, it is

**ORDERED**

that the jury be adjourned over until 10:00 a.m. tomorrow.



*Orders of the Court on Sentence.*

R. p. 125

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 19th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

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UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION.  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER  
J. A. MESSER, SR., and  
W. A. GORDON

---

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of said defendant corporations, by counsel, and came also the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented by counsel, and came also the same jury as on yesterday; and thereupon the United States resumed the introduction of its evidence, and the hour of adjournment

*Orders of the Court on Sentence.*

having been reached before the conclusion of the introduction of the government's evidence, it is

ORDERED

that the jury be adjourned over until 10:00 a. m., tomorrow.

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 20th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY,  
*et al*

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of said defendant corporations, by counsel, and came also the said defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented by counsel, and came also the same jury as on yesterday; and thereupon the United States resumed the introduction of its evidence, and the hour of adjournment having been reached before the conclusion of the introduction of the R. p. 126 government's evidence, it is

ORDERED

that the jury be adjourned over until 10:00 a. m., tomorrow.

*Orders of the Court on Sentence.*

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 21st day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED  
MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED  
WEAVER MIRROR COMPANY, INCORPORATED  
EDD F. GARDNER  
J. A. MESSER, SR., and  
W. A. GORDON

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented by counsel; and came also the same jury as on yesterday; and thereupon the United States resumed the introduction of its evidence, and the hour of



*Orders of the Court on Sentence.*

adjournment having been reached before the conclusion of the introduction of the government's evidence, it is

ORDERED

that the jury be adjourned over until 10:00 a.m., tomorrow.

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 22nd day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY,  
*et al*

ORDER  
Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented R. p. 127 by counsel; and came also the same jury as on yesterday; and thereupon the United States resumed the introduction of its evidence, and the hour of adjournment having been reached before the conclusion of the introduction of the government's evidence, it is

ORDERED

that the jury be adjourned over until 10:00 a.m., November 25, 1957.

*Orders of the Court on Sentence.*

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 25th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER  
J. A. MESSER, SR., and  
W. A. GORDON

ORDER  
Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations by counsel, and came also the defendants, Edd F. Gardner, J. A. Messer, Sr., and W. A. Gordon, and each and all of said defendants was represented by counsel; and came also the same jury as on November 22, 1957; and thereupon the United States Attorney announced to the Court that the government rested its case in chief.



*Orders of the Court on Sentence.*

And thereupon, in chambers and out of the hearing of the jury, counsel for the Virginia Mirror Company moved the Court for a judgment of acquittal, in which motion counsel for each of the other parties united as to each of the other defendants, and counsel for each of said parties stated grounds in support of the motion as to each, and the Court upon hearing the arguments of counsel for the defendants and for the United States, and upon consideration, granted said motion as to the defendant W. A. Gordon and, for reasons stated, denied said motion as to each of the other defendants, to which action of the Court in denying said motion as to each of the other defendants, each by counsel excepted.

And thereupon the Court, for reasons stated, informed the jury of his dismissal from their further consideration of the indictment as to said defendant W. A. Gordon. And thereupon counsel for the defendants began the introduction of their evidence and the hour of adjournment having been reached before the conclusion thereof, it is

.ORDERED

that the jury be adjourned over until 10:00 a. m., tomorrow.

*Orders of the Court on Sentence.*

R. p. 128

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 26th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY

VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER and  
J. A. MESSER, SR.

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations by counsel; and came also the defendants Edd F. Gardner, and J. A. Messer, Sr., and each and all of said defendants was represented by counsel; and came also the same jury as on yesterday; and thereupon the defendants resumed and concluded the introduction of their testimony and rested their case; and both sides rested.

*Orders of the Court on Sentence.*

And, thereupon, for reasons stated by the Court and appearing at length in the transcript of the record, it is

**ORDERED**

that the jury be adjourned over until 10:00 a.m., December 2, 1957.

And thereupon the defendants, by counsel, renewed their motion made at the close of the Government's evidence in chief, for the direction of a verdict of acquittal of each of the remaining defendants, relying in support of said motion upon grounds stated in support of their motion made at the close of the Government's evidence in chief, and assigning some additional grounds, and the Court, upon consideration, denied said motion as to each of said defendants, and each of said defendants, by counsel, excepted.

And the hour of adjournment having been reached, it is

**ORDERED**

that the Court be adjourned over until 10:00 a.m., tomorrow.

*Orders of the Court on Sentence.*

R. p. 129

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 27th day of November, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED  
MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED  
WEAVER MIRROR COMPANY, INCORPORATED  
EDD F. GARDNER, and  
J. A. MESSER, SR.

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner and J. A. Messer, Sr., and each and all of said defendants was represented by counsel; and thereupon counsel for the United



*Orders of the Court on Sentence.*

States and for the defendants tendered in writing their respective requests for instructions to be given the jury; and the Court, not having fully heard and considered arguments of counsel in support of their respective requests for instructions, and the hour of adjournment having been reached, it is

**ORDERED**

that further consideration of said requests be adjourned over until 10:00 a.m., December 2, 1957.



*Orders of the Court on Sentence.*

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 2nd day of December, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY

VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER, and  
J. A. MESSER, SR.

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner and J. A. Messer, Sr., and each and all of said defendants was represented by counsel; and there came also the same jury as on the 26th day of November, 1957; and thereupon, in chambers and out of the hearing of the jury, the Court,

*Orders of the Court on Sentence.*

upon further hearing of counsel and consideration of defendants' respective requests for instructions, R. p. 130 indicated to counsel the charge that would be given the jury, to which indicated action of the Court defendants, by their counsel, requested to be then and there heard, which request was granted by the Court on their objections, and with the statement that counsel would be afforded opportunity to make such objections or suggestions of amendment to the charge as given after said charge was given as they may be advised and before the jury retired to consider of their verdict, all of which appears at length in the transcript of the record.

And thereupon counsel for the United States and for the defendants argued the case to the jury, and the Court charged the jury as indicated to counsel.

And thereupon, before the jury retired to consider their verdict, counsel were afforded opportunity to make such suggestions of amendment or objections to the charge as given as they might be advised in the premises; and thereupon counsel for the parties specified certain objections to the charge as given, and omissions from their requests for instructions, and the Court, upon consideration, made certain corrections to the charge as given to the jury, and refused others, to which refusal by the Court counsel for the parties duly excepted, all of which more fully and at length appears in the transcript of the record. And the hour of adjournment having been reached

**IT IS ORDERED**

that the jury be adjourned over until 10:00 a.m., tomorrow.

## Verdict and Order of the Court on Sentence.

At a Regular Term of the United States District Court for the Western District of Virginia, continued and held at Roanoke, in and for said District, on the 3rd day of December, 1957.

Present:

Honorable JOHN PAUL, Chief United States District Judge

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY  
CAROLINA MIRROR CORPORATION  
GALAX MIRROR COMPANY, INCORPORATED

MOUNT AIRY MIRROR COMPANY  
STROUPE MIRROR COMPANY  
VIRGINIA MIRROR COMPANY, INCORPORATED

WEAVER MIRROR COMPANY, INCORPORATED

EDD F. GARDNER, and  
J. A. MESSER, SR.

ORDER

Criminal Action  
No. 5790

This day came the United States Attorney and came also each of the said defendant corporations, by counsel, and came also the defendants Edd F. Gardner and J. A. Messer, Sr., and each and all of said defendants was represented by counsel; and thereupon the jury retired to their room to consider of their verdict, and after some time returned into open Court and the Foreman requested of the Court some further R. p. 131 explanations in respect to the charge in the indictment, which the Court accordingly gave, and to which counsel for the parties and each of them excepted; and on

*Verdict and Order of the Court on Sentence.*

the further request of a juror for explanation of a seeming contradiction between a certain instruction given by the Court and the charge in the indictment, which the Court gave, and to which the defendants and each of them by counsel excepted, all of which appears at length in the transcript of the record.

And thereupon the jury returned to their room to further consider of their verdict, and after some time returned into open Court and rendered their verdict as follows:

“We, the jury, find the defendants guilty as charged.

December 3, 1957

CHARLES K. COPENHAVER,  
Foreman.”

And thereupon the jury was discharged, and it is

**ORDERED**

that said verdict be recorded, which is accordingly done.

And thereupon the defendants, by counsel, in which each of said defendants by counsel united, moved the Court in arrest of judgment; and further moved the Court to set aside the verdict and grant said motion for judgment of acquittal, assigning grounds in support of each of said motions; and the Court, upon hearing arguments of counsel and upon consideration, overruled each of said motions, to which said defendants and each of them, by counsel, duly excepted, all of which appears at length in the transcript of the record.

Whereupon, it is considered, adjudged, and

**ORDERED**

by the Court that the United States of America do have and recover from said defendants the sum of a fine as follows:



*Verdict and Order of the Court on Sentence.*

The defendant Pittsburgh Plate Glass Co., a fine of \$4,000.00,

The defendant Galax Mirror Co., Inc., a fine of \$4,000.00,

The defendant Mount Airy Mirror Co., a fine of \$2,500.00,

The defendant Carolina Mirror Co., a fine of \$3,500.00,

The defendant Stroup Mirror Co., a fine of \$3,500.00,

The defendant Virginia Mirror Co., Inc., a fine of \$3,500.00,

R. p. 132

The defendant Weaver Mirror Co., Inc., a fine of \$1,000.00,

The defendant Edd F. Gardner, a fine of \$2,500.00, and

The defendant J. A. Messer, Sr., a fine of \$2,500.00; and it is further

**ORDERED**

that the defendants and each of them be, and they hereby are, granted ninety days within which to pay said fine, and thereafter, for the collection of any and all unpaid fines execution shall issue at the instance of the United States Attorney in accordance with provisions of law.

And thereupon counsel for the United States moved the Court for the taxation of witness fees on behalf of the Government, and the cost of the transcript of the record, and the Court, upon hearing arguments of counsel thereon and consideration, denied said motion.

It is further

**ORDERED**

that copies hereof be certified to counsel of record for the respective parties hereto.

A copy, attested

STELLA M. LANGFORD,

D. C.



**Subpoena *Duces Tecum*, Dated October 3, 1957, Issued  
to Galax Mirror Company, Incorporated, on  
Application of United States.**

**UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY,  
*et al.*

Criminal  
No. 5790

TO GALAX MIRROR COMPANY, INCORPORATED  
Galax, Virginia

You are hereby commanded to appear in the United States District Court for the Western District of Virginia at the Federal Courthouse in the city of Roanoke, Virginia on the 18th day of November 1957 at 9:30 o'clock A. M. to testify in the case of *United States v. Pittsburgh Plate Glass Company, et al.* and bring with you the records and documents described in the appendix attached hereto and made a part hereof.

This subpoena is issued upon application of the United States.

October 3, 1957.

JOHN STRICKLER, U. S. Attorney  
Roanoke, Virginia

SAMUEL KARP, Attorney  
Department of Justice

s/ C. E. GENTRY  
Clerk

By s/ STELLA M. LANGFORD  
Deputy Clerk

*Subpoena Duces Tecum, Dated October 3, 1957, Issued to  
Galax Mirror Company, Incorporated, on Application  
of United States.*

**Appendix**

**To Subpoena Duces Tecum  
Galax Mirror Company,  
Incorporated**

1. The certificate of incorporation of Galax Mirror Company, Incorporated (herein referred to as "Galax") or if the original is not in your possession, a true copy thereof.

2. The original of a letter from Victor R. Hansen, Assistant Attorney General, Antitrust Division, to Galax dated March 11, 1957, requesting "List Prices of Plain Mirrors April 1, 1950".

3. Delivery receipts, books of account, records, compilations and other documents showing, for the years 1954 and 1955, the shipments (whether by Galax's own trucks or otherwise) of plate glass mirrors by Galax to furniture manufacturers located in states other than the State of Virginia.

4. The records from which the data contained in the documents described below were derived (such documents having been submitted by Galax in Grand Jury Proceedings at Roanoke, Virginia):

(a) Document entitled "INDUSTRIAL DEPARTMENT, Sales to Furniture Manufacturers", showing total dollar sales of plate glass mirrors for each of the years 1953, 1954, 1955 and 1956.

(b) Document entitled "CUSTOMERS FOR 1953", listing furniture manufacturer customers for plate glass mirrors.

*Subpoena Duces Tecum, Dated October 3, 1957, Issued to  
Galax Mirror Company, Incorporated, on Application  
of United States.*

(c) Document entitled "CUSTOMERS FOR 1954", listing furniture manufacturer customers for plate glass mirrors.

(d) Document entitled "CUSTOMERS FOR 1955", listing furniture manufacturer customers for plate glass mirrors.

(e) Document entitled "CUSTOMERS FOR 1956", listing furniture manufacturer customers for plate glass mirrors.

**Subpoena *Duces Tecum*, Dated October 4, 1957, Issued  
to Mount Airy Mirror Company on Application  
of United States.**

**UNITED STATES DISTRICT COURT**

**FOR THE  
WESTERN DISTRICT OF VIRGINIA.**

UNITED STATES OF AMERICA,

*v.*

PITTSBURGH PLATE GLASS COMPANY,  
*et al.*

Criminal  
No. 5790

To MOUNT AIRY MIRROR COMPANY  
MOUNT AIRY, NORTH CAROLINA

You are hereby commanded to appear in the United States District Court for the Western District of Virginia at the Federal Courthouse in the city of Roanoke, Virginia on the 18th day of November 1957 at 9:30 o'clock A. M. to testify in the case of *United States v. Pittsburgh Plate Glass Company, et al.* and bring with you the records and documents described in the appendix attached hereto and made a part hereof.

This subpoena is issued upon application of the United States.

October 4, 1957.

John Strickler, U. S. Attorney  
Roanoke, Virginia

Samuel Karp, Attorney  
Department of Justice

s/ C. E. GENTRY,  
Clerk,

By s/ STELLA M. LANGFORD,  
Deputy Clerk.



*Subpoena Duces Tecum, Dated October 4, 1957, Issued to  
Mount Airy Mirror Company on Application  
of United States.*

**Appendix**

**To Subpoena Duces Tecum  
Addressed to Mount Airy Mirror Company**

1. The original of a letter from Victor R. Hansen, Assistant Attorney General, Antitrust Division, to Mount Airy Mirror Company (herein referred to as "Mount Airy") dated March 11, 1957, requesting the "List Prices of Plain Mirrors April 1, 1950".

2. Delivery receipts, books of account, records, compilations and other documents showing, for the years 1954 and 1955, the shipments (whether by Mount Airy's own trucks or otherwise) of plate glass mirrors by Mount Airy to furniture manufacturers located in states other than the State of North Carolina.

3. The records from which the data contained in the documents described below were derived (such documents having been submitted by Mount Airy in Grand Jury Proceedings at Roanoke, Virginia):

(a) Document dated December 3, 1956, entitled "Furniture Manufacturers—Plain Mirror Customers for the Year 1955", showing total dollar sales of mirrors to such customers for the year 1955

(b) Document dated December 3, 1956, entitled "Furniture Manufacturers—Plain Mirror Customers for the Year 1954", showing the total dollar sales of mirrors to such customers for the year 1954

(c) Document dated December 3, 1956, entitled "Furniture Manufacturers—Plain Mirror Customers for the Year 1953", showing the total dollar sales of mirrors to such customers for the year 1953.



**Subpoena Duces Tecum, Dated October 3, 1957, Issued  
to Pittsburgh Plate Glass Company, on  
Application of United States.**

**UNITED STATES DISTRICT COURT**

**FOR THE**

**WESTERN DISTRICT OF VIRGINIA**

**UNITED STATES OF AMERICA**

**v.**

**PITTSBURGH PLATE GLASS COMPANY,  
et al.**

Criminal  
No. 5790

**To Pittsburgh Plate Glass Company  
One Gateway Center  
Pittsburgh, Pennsylvania**

You are hereby commanded to appear in the United States District Court for the Western District of Virginia at the Federal Courthouse in the city of Roanoke, Virginia on the 18th day of November 1957 at 9:30 o'clock A. M. to testify in the case of *United States v. Pittsburgh Plate Glass Company, et al.*, and bring with you the records and documents described in the appendix attached hereto and made a part hereof.

This subpoena is issued upon application of the United States.

**October 3, 1957.**

**JOHN STRICKLER, U. S. Attorney  
Roanoke, Virginia.**

**SAMUEL KARP, Attorney  
Department of Justice.**

**s/ C. E. GENTRY,  
Clerk.**

**By s/ STELLA M. LANGFORD,  
Deputy Clerk.**

*Subpoena Duces Tecum, Dated October 3, 1957, Issued to  
Pittsburgh Plate Glass Company on Application  
of United States.*

**Appendix  
To Subpoena Duces Tecum  
Addressed to Pittsburgh Plate Glass Company**

1. The certificate of incorporation of Pittsburgh Plate Glass Company (herein referred to as "PPG") or if the original is not in your possession, a true copy thereof.

2. The documents from which photostats were made by PPG, submitted by PPG in Grand Jury Proceedings at Roanoke, Virginia, and numbered by PPG as follows:

- (a) PHP-1 to PHP-313, inclusive
- (b) PGO-601 to PGO-645, inclusive
- (c) 20A-228 and 20A-229.

3. All compilations, tabulations, tables, summaries, reports or memoranda comparing, for the years 1952, 1953, 1954, 1955 and 1956, the production, shipments, dollar sales, and/or sales in square feet, of plate glass by PPG with that of any or all of the following:

- (a) Libbey-Owens-Ford Glass Company
- (b) Franklin Glass Company
- (c) The entire domestic plate glass industry.

4. Delivery receipts, books of account, records, compilations and other documents showing, for the years 1954 and 1955 the shipments (whether by PPG's own trucks or otherwise) of plate glass mirrors by PPG's High Point, North Carolina branch to furniture manufacturer customers located in states other than the State of North Carolina.

*Subpoena Duces Tecum, Dated October 3, 1957, Issued to  
Pittsburgh Plate Glass Company on Application  
of United States.*

5. The records of PPG from which the data contained in the documents described below were derived (such documents having been numbered and submitted by PPG in Grand Jury Proceedings at Roanoke, Virginia):

(a) PHP-213 (Revised) entitled "PPG High Point Warehouse Furniture Manufacturer Customers", showing 1954 total dollar sales of mirrors to such customers.

(b) PHP-217 (Revised) entitled "PPG High Point Warehouse Furniture Manufacturer Customers", showing 1955 total dollar sales of mirrors to such customers.

(c) PHP-221 (Revised) entitled "PPG High Point Warehouse Furniture Manufacturer Customers", showing 1956 total dollar sales of mirrors to such customers.

6. Books, records, lists and memoranda showing the titles or positions held and the duties performed by each of the following employees or officers of PPG during the period from January 1, 1950 to March 26, 1957:

W. A. GORDON  
L. H. HANCOCK.



**Excerpts from Pretrial Hearing on Motions.****Hearing of June 21, 1957.**

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Mr. Gibson: I trust I may touch on the Criminal as well as the Civil case, though we will file the same request for clarification of government pleadings which is involved in both of the Motions.

If the Court Please, there are two points upon which our request of the Court, asking for clarification of the government's pleadings, that go beyond the points which Mr. Anderson has discussed.

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First, in Paragraph 11 of both the Civil case and the Indictment, the government alleges that the conspiracy is one 'continuing thereafter.' But the government does not express, anywhere in the Indictment or in the Civil case, whether or not they mean by this paragraph in the Indictment that the conspiracy continued until the date of the pleadings.

We ask, simply, that the government clarify whether they mean that the offense charged continued until the date of the pleadings or, if not, how long?

Our request on that point goes, basically, to clarification of the issues involved in this case: whether we are involved with a complaint of an alleged offense that took place one, three years ago, four years ago, two-and-a-half years ago, or ceased or continued for a year thereafter? In short, we ask whether the conduct of the parties in 1955 is an issue in these cases? whether the conduct of the parties in 1956 is an issue in these cases?

We might well presume, in the Civil case, they are bound to mean continuation until the filing of the complaint, as that circumstance goes right to the heart as any basis for equitable relief or need for equitable relief. However the government has not told us what they do mean.

*Excerpts from Pretrial Hearing on Motions.*

It is also conceivable to us that perhaps the government would undertake a charge of certain duration of the alleged offense in the Civil case, but of a lesser

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duration than in the Criminal case because of the difference of standard of proof required.

The Court: The allegation: "The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action \* \*" so forth.

In other words, your thought is that that may not mean 'continuing' until the time of the Indictment or 'continuing' until the time of the Indictment or 'continuing' until the time of the complaint?

Mr. Gibson: That is correct. We don't think we should guess.

The Court: I think it meant 'continuing' until the Indictment was returned and complaint filed and 'continuing' at that time. Possibly that isn't what it meant.

Mr. Gibson: We believe that a good deal of importance in the realities of this case may be involved, whether the government means the conspiracy continued through 1955 or through 1955 and 1956. We gather, that the government's case starts 'October 1954,' at the time of the acute glass shortage and at the time, under those circumstances, there was a general increase in mirror prices. We are confident, in whatever the government may succeed to establish, by inference or otherwise, as to that period, that the years 1955 and 1956 will show a great deal of price discrepancy and price competition. Will that be involved in the issues in this case? We are asking a very simple clarification from the government

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as to whether those years are in issue.

There is really no more I have to add to that, your Honor.



*Excerpts from Pretrial Hearing on Motions.*

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The Court: What about the continuation of the

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conspiracy, the question raised by Mr. Gibson?

Mr. Karp: A conspiracy, under Antitrust Laws particularly, if we show to have been in effect at a certain time is presumed to have been continued, unless it is shown to have been abandoned, and 'unless it is shown to have been abandoned' is a matter of proof by defendants. We allege 'a continuing conspiracy.'

It is very interesting, *United States against Safeway Stores*, an indictment charged 'a continuing conspiracy,' which continued during the period of the Statute of Limitations of five years, and continued thereafter, and there was no trouble, so happened they pleaded *nollo* just the other day and were fined and sentenced to jail, so forth, but there was no problem as to the 'continuing' thereafter because conspiracies to fix prices, any conspiracy, under the Antitrust Laws, is presumed to have continued unless abandoned and they can defend that the conspiracy was abandoned during the Statute of Limitations, then they have got, of course answers the attempt to complications raised by Mr. Anderson, when he refers to Paragraph 15 of the Indictment, under the heading of "JURISDICTION AND VENUE," and points out there that the Indictment states that:

"During the period of time covered by this indictment and within the past five years, the defendants have performed within the

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Western District of Virginia some of the acts in furtherance of the combination and conspiracy charged in this indictment."

*Excerpts from Pretrial Hearing on Motions.*

Why was 'the past five years?' because the Statute of Limitations is 'five years,' is why we allege that, and gives the Court "Jurisdiction and Venue."

Now if your Honor Please——

The Court: (Interrupting) I understand, it is understood filing an Indictment in a Criminal Action and Complaint in a Civil Action, you allege this conspiracy was at the time those were filed, Indictment returned and Complaint filed?

Mr. Karp: Within the statutory period of limitations, there was this conspiracy to fix prices, a continuing conspiracy to fix prices, and continues thereafter and to ask the government at this very moment, or when the grand jury met or we knew there was a grand jury proceeding they had or had not abandoned—we allege 'a continuing conspiracy,' presumed to continue and we should not be required, under a Bill of Particulars, to say now you did or did not abandon it. We say 'continuing thereafter.'

They have two list prices books, mentioned by Mr. Anderson, one dated April 1, and one dated April 5, 1950, which we charge in the Indictment are identical; that they agreed on identical list prices and we allege they charged

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identical discounts.

When did it begin?

Did it begin on the date when the list prices are dated, in April 1950? or was it set afoot before the list prices were dated? or did this particular conspiracy begin after the list prices were dated, but accepted and agreed upon, to be applied the same way?

Those are evidentiary details which, at the trial, can be shown, in order to show conspiracy. They ask us to lay out the means and the methods: When was each method entered upon? As we allege, two means and methods were used to fix prices: the agreement on list prices or books, referred to by Mr. Anderson. They want us to break down the constituent parts of the conspiracy, but the courts have

*Excerpts from Pretrial Hearing on Motions.*

said that can't be done, particularly in antitrust cases, since *United States versus Swift* (1905).

We have, in our brief, a specific quotation which says "The government cannot possibly be required to break down the constituent parts of a conspiracy, that is when each part came into effect." It is enough to say that there is 'a continuing conspiracy.'

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The Court: I don't see the materiality of that, Mr. Gibson. This charge is that you were one of the group who conspired to fix prices and you entered into a conspiracy and though you never sold anything you would still be guilty, if you actually entered into the conspiracy.

Mr. Gibson: We realize that there can be a bare conspiracy, just an agreement and nothing done. No question on that, but we do have an important and practical question as to the scope of matters involved. Our request on that

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point was simply to ask for the meaning of the government's pleadings as to whether they do mean all of our trade was under fixed prices, or trade in an area? We thought a practical approach: How wide is the controversy involved in these two cases?

On the second question: the continuation of the conspiracy—again, Mr. Karp is talking 'evidence', he is talking about presumption of continuation, once you prove something starts. I am not talking about 'evidence' but 'issues,' what we are charged with.

Mr. Karp knows, in a Civil case, if the offense complained of began in 1954, of course we should know to what period it continued. I think that is mere pride of authorship. Why shouldn't he particularize in his pleadings what he means? And also it is important in the Criminal case for us to know whether or not we are charged with conspir-



*Excerpts from Pretrial Hearing on Motions.*

ing during the year 1955; whether we are charged with conspiring during the year 1956? Those are the issues that must be resolved here in this contest.

The Court: I can't agree with you, Mr. Gibson. The charge is made that you entered in:

"Beginning in or about October 1954, or prior thereto, the exact date being to the grand jurors unknown, and continuing thereafter, the defendants, the co-conspirators

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and others to the grand jurors unknown, have been engaged in a combination and conspiracy in unreasonable restraint \* \*"

so on and so forth; and later on referred to as 'a continuing conspiracy.'

It isn't up to the government to say whether that conspiracy terminated at a particular time, or anything of that sort.

Gentlemen, I am going to deny all the requests made here, every one of them. I don't think there is any merit in any of them.

What you Gentlemen are seeking to do is to get admissions or limitations from the government as to what evidence they are going to introduce, or what issues they are going to try, and I don't think you are entitled to it.

The charge is very definite: the time when the conspiracy began, as near as the grand jurors can fix it, and it is alleged to be 'a continuing conspiracy.'

Now there is no crime in the whole category of the criminal law that permits as wide discretion and wide latitude in the introduction of evidence as the charge of 'conspiracy.' 'Pretty nearly everything comes under a conspiracy charge: whether that is a happy situation or not. But the government certainly ought not to be tied down to definite dates and to definite lines of evidence because, in the course of a

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conspiracy, things develop, on both sides, which permit the greatest latitude of evidence.

You can defend against this indictment without any trouble. The charge is made perfectly clear to you and, if you didn't enter into this conspiracy they charge you here with doing, you know it and you can defend against it without any further information; and the government ought not to be put in a straight-jacket as to the evidence it is going to introduce, or as to the particular issues that are going to be involved, in showing a conspiracy did exist, which can be shown by circumstantial evidence or by direct evidence. As I said awhile ago, there is no criminal charge in the whole list of criminal charges that permits as much latitude as conspiracy cases, and the government ought not to be tied down and limited beforehand as to what it is going to prove.

I don't want to seem discourteous to you Gentlemen in not reading your Memoranda of authorities on this case but I am so convinced there is no merit in your contention that it would be just a delay for me to read them over and then write you my conclusion. I hope you won't think I am abrupt or, as I say, discourteous, but I have tried a lot of conspiracy cases: I am no expert in conspiracy cases, but I have tried forty or fifty, of various kinds, since I have been on the Bench, and I think I am right in denying all of the motions.

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So, unless you Gentlemen have something else to say, we will adjourn, and I will enter the proper Order.

Mr. Hazlegrove: Will your Honor enter an Order in both cases, the effect of your rulings, sir?

The Court: Yes, I will enter an Order in both cases.

Mr. Gibson: To complete the record, the Virginia Mirror Company would like to submit its Motion; we haven't, yet, submitted our Motion in the Criminal case, so to com-



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plete the record we would like to file the Motion, which is doomed to be denied.

The Court: All right, sir.

Hearing of August 1, 1957.

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Mr. Karp: It is most unique for Counsel to come here representing defendants and on the one hand admit that they did participate at 'a' meeting in a 'a' room and agree upon prices, and on the other hand to say this might have been a technical violation and that they didn't know they were violating the law.

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If Your Honor please, if they did violate the law, then they have already pled; if they violated the law and they wish to avoid litigation, if they wish to throw themselves on the mercy of the Court, if they wish to show other extenuating circumstances which relate to the penalty, they have a ready medium: they can plead "Guilty."

If, on the other hand, they come here and say: "We did participate in certain acts. We admit them. We had, however, doubts of their illegality and we wish to save the time of the Court in proving them," they might have an appropriate situation in which they could, in bona fide good faith ask for the indulgence of the Court and enter a *nolo contendere* plea.

But this is not the situation.

We charge in the indictment, the Grand Jury charges in the indictment a 'continuing conspiracy,' not an isolated thing, but 'continuing conspiracy' to fix prices, and they seem to admit it here. However they say that was 'merely technical' because the price wasn't applied consistently. We don't know about that and we say it is not relevant: it

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is not relevant whether or not, after certain defendants agreed upon a price that they did or did not adhere to it. It is the conspiracy, 'the continuing conspiracy' to fix prices, which violation of the antitrust law was a serious violation of the law.

We submit, Your Honor, that petitions desiring to

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change their pleas to *nolo contendere* should show that acceptance of the pleas would better serve the administration of justice. This is not shown here. It is not shown here by the very statements as to 'technicality of violation' made orally and in brief, for it is obvious that all they must do is to come to court, ask for *nolo contendere* pleas and then go out and proclaim to the world their innocence.

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Hearing of October 16, 1957.

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Mr. Anderson: We have outstanding today, if I am correct, "Government's Motion to Quash Pittsburgh Plate Glass Company's Subpoena Duces Tecum," which was served on Mr. Karp in July, the government having filed a Motion to Quash.

On or about September 9th, I believe, and thereafter, Pittsburgh Plate Glass filed a motion for advance inspection of certain designated documents covered by that subpoena *duces tecum* and if Your Honor please, it occurs to me that you might consider taking up, first, the government's Motion to Quash, because if that is sustained, we don't reach the Pittsburgh Plate Glass Motion. And further, if Mr. Karp is prepared to speak, first, as the proponent of that motion, I would suggest that form of procedure this morning.

The Court: All right, Sir.

*Excerpts from Pretrial Hearing on Motions.*

What is your subpoena *duces tecum* directed to? I want to know that.

Mr. Anderson: Our subpoena, Your Honor, initially was broader than the subpoena which we have now modified voluntarily. The subpoena, as we treat it now, is in the text of the proposed Order that we sent you, with a copy to the

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government, under date of September 13, 1957.

If I may, I will hand up a copy of this proposed Order.  
(Handing document to the Court)

The Court: I think I might have it. (Searching through file)

Mr. Anderson: Also I would like to add, we sent our Memorandum of Argument to you, Your Honor, with a copy to Mr. Karp, and "Appendix A" in that Memorandum sets forth the subpoena as we now interpret it.

I would like to file a copy of the subpoena, as modified, with the Court Reporter so that it gets into the record.

The Court: All right.

Is a copy of the subpoena as modified attached to your argument here?

Mr. Anderson: Yes, sir.

The Court: I just received this day before yesterday and was busy all day yesterday hearing motions in other cases and I haven't had time to go over it.

(Indicating document) Yes, this is headed:

"Pittsburgh Plate Glass Company's subpoena duces tecum served upon Samuel Karp, Esq., on July 11, 1957 as limited by Pittsburgh Plate Glass Company's proposed order transmitted

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under date of September 13, 1957."



*Excerpts from Pretrial Hearing on Motions.*

Mr. Anderson: That is correct, Your Honor. (The Subpoena *duces tecum* is as follows:—)

“I. All documents, books, papers and objects (other than memoranda prepared by Government counsel) obtained by Government counsel (except such items obtained by process and impounded in the custody of Samuel Karp by Order of this Court on January 25, 1957) in the course of the investigation by the Grand Jury which returned the indictment herein, or in the course of the Government's preparation for the trial of this cause, if such books, papers, documents and objects (a) have been presented to the Grand Jury, or (b) are to be offered as evidence in the trial of the defendants, or any of them, under said indictment, including specifically the following:

“1. Hotel guest registry, books, cards, records, statements, memoranda, letters, including all records relating to telephone calls, maintained or kept by or on behalf of the Grove Park Inn, Asheville, North Carolina, for the period October 24-October 28,

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1954, which show the name of or in any way relate to

“(a) Any and all of the individual or corporate defendants or co-conspirators;

“(b) Any and all of the officers, agents or employees of any corporate defendant or co-conspirator;

“(c) Any and all officers, agents, employees or members, or any and all officers, agents or employees of a member, of the Mirror Manufacturers Association.

“2. All records of the type listed in paragraph 1 above, relating in any way to any or all of the persons listed in subparagraphs 1(a), (b) and (c) above,

*Excerpts from Pretrial Hearing on Motions.*

maintained or kept by or on behalf of the restaurant, cafe or inn known as The Bluffs, Doughton Park, North Carolina, for the period October 27-October 29, 1954."

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The Court: I see no reason why all the matters in this subpoena issued at the instigation of the defendants should not be produced November 18th, which does not mean the Court is now ruling the documents shall be submitted to Counsel for defendants for inspection on that date. I will rule on each of them as they come up and are offered or requested.

Mr. Karp: You are now referring to their modified subpoena?

The Court: Yes. Which comprises this matter which you—which part will be offered in evidence, or documents and papers of any sort which were presented to the Grand Jury: you were to have those present on the 18th of November.

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Mr. Karp: I will be very glad to.

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The Court: I think there is, in this case.

As I have stated previously, in the arguments that have been made in the case before me, I am one of these Judges who believes the government doesn't have to disclose their evidence in a criminal case, to allow a defendant to prepare against them; I am very averse to make the government disclose evidence they expect to produce at the trial, but the production of these tickets doesn't disclose anything except what was on the tickets and I think they are entitled to have a chance, (I am not going to assume they are going to



*Excerpts from Pretrial Hearing on Motions.*

perjure themselves) but I think they should have a chance to refresh their minds as to those telephone conversations and any data on them that have a bearing on the subject matter, to be able to produce at the trial, to come refreshed as to the dates and times when those conversations were made. The tickets don't disclose anything about the subject matter of the conversations, and doesn't disclose any part of the government's case, except they know you have certain tickets, and I think they are entitled to know, for the reasons they have stated there.

Mr. Humrickhouse: I have another matter I wanted to call to your attention, Your Honor.

Your Honor will remember that when we were here, July 18th, that there was some discussion with reference to the propriety of defense Counsel interviewing so-called "key

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witnesses" for the government. Well, we had particular reference, at that time, to interviewing Mr. A. G. Jonas, who was stated to be a "key witness" before the Grand Jury, by government Counsel.

Your Honor delayed the taking of depositions in the civil case, pending the outcome in this court of the criminal case.

The Court: Yes, sir.

Mr. Humrickhouse: At that time, we specifically requested Your Honor to rule whether or not we could interview Mr. Jonas and Your Honor said you "wouldn't rule we could not" but you "didn't think perhaps we ought to," or something to that effect. It is on Page 20, I believe, of the Transcript of that date.

In any event, on a date subsequent, we—Mr. Anderson, our Associate, advised Mr. Jonas that the deposition for the 23rd of July had been postponed and requested that he be given the opportunity of talking with Mr. Jonas, advised him that there was nothing improper under the Canon of

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Ethics, to talk with him; and further advised him that Your Honor had indicated that you thought it was not improper to talk with him.

Mr. Jonas advised Mr. Anderson that Mr. Karp, Government Counsel, had already been in touch with him and had told him not to talk to defense Counsel.

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Now as a result of that sir, there have been a series of correspondence between Mr. Anderson and Mr. Karp's office and I wanted to bring those to Your Honor's attention, because in the last communication we received from the Department of Justice, they suggested we might bring it to Your Honor's attention.

Specifically, we inquired of Mr. Karp whether or not he did tell Mr. Jonas not to talk to defense Counsel, and to this date, that inquiry has not been answered.

If I may give the chronology of these letters, just so Your Honor may see what happened:

On July 26, 1957, Mr. Anderson wrote to Mr. Karp, and the second paragraph says:

"In the course of the conversation, I informed Mr. Jonas that during the July 18 hearing the point was raised whether defense counsel could interview in advance of trial a witness for the Government in a criminal case, and that Judge Paul had refused to rule that we could not interview prospective Government witnesses.

"I asked Mr. Jonas whether I could come to Lenoir and interview him. In reply, Mr. Jonas stated that he had already heard from you concerning the argument before Judge Paul on July 18 and that you had told him not to talk to defense counsel.

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"I should like to know directly from you whether you told Mr. Jonas not to talk to defense counsel."

*Excerpts from Pretrial Hearing on Motions.*

The next letter was one from Mr. Anderson to Mr. Karp, about a month later, asking him to answer: one of Mr. Karp's superiors stated that he understood, at a conference between Mr. Anderson and myself, and Mr. Karp and Mr. Carlson, that the matter had been satisfactorily explored and answered.

That was not true, sir. I was there: Mr. Karp said "I refuse to be interrogated on that subject," he would talk about everything else but refused to be interrogated on that subject.

We advised Mr. Hansen, on September 11th:

"It is true, as you indicated in your letter of September 5, that Mr. Humrickhouse and I discussed with Messrs. Karp and Carlson of your staff on September 4, 1957, the question asked of Mr. Karp in my letters to him of July 26 and August 28, 1957. However, at no time during these discussions did either Mr. Karp or Mr. Carlson answer our inquiry."

Mr. Hansen replied he did not think in the controversy as to the truthfulness or falsity of the altercation between Mr. Anderson and Mr. Karp, "I do not see that any useful purpose will be served by a further discussion of this matter."

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And on October 7th, they suggest we might take the matter up before Your Honor.

What I want to know, and I would like for Your Honor to rule specifically—first, I would like to know if Mr. Karp will answer the inquiry, whether he did advise Mr. Jonas of that? He has not answered our inquiry.

The Court: I don't think he has to answer it.

Mr. Humrickhouse: I want to know if Your Honor rules we cannot talk to defense witnesses?



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The Court: There is no rule of law I know of that says opposing counsel can't talk to witnesses of the opposing party. I have never known, as a lawyer in active practice,—and when you were District Attorney you have given that advice to witnesses, not to talk to defense counsel, or anybody else.

Mr. Humrickhouse: I have told them I hoped they wouldn't, not "couldn't" or "shouldn't."

The Court: That is to say, hoped they wouldn't and urged them not to.

Mr. Humrickhouse: That is the reason we want to find out what Mr. Karp says.

The Court: That is just a question of the strength of the statement.

The Court has no right to say to Counsel "You can, or cannot talk to the witnesses," but I know that every

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lawyer in active practice tries to protect witnesses because in talking to opposing Counsel, confronted with a claim he made a contradictory statement, something of that sort, and it adds confusion to the case, and at least in my practice, it was customary that when counsel want to talk to the witnesses he knew were under subpoena, or introduced by opposing counsel, he asked opposing counsel if he had any objection to him talking to them. He wasn't bound by what opposing counsel's response might be, but he ordinarily took that step, rather than taking a position of acting surreptitiously..

The Court can't say whether witnesses may talk to counsel. I have gone to many of them, with the permission of opposing counsel—not many, but certainly on occasion—and if he says "No, I am not going to talk to you about it, Captain. I am a witness on the other side. I am not going to talk. I will tell my story when I come on the Stand—"

Mr. Humrickhouse: (Interrupting) You don't think permission is necessary but that is your usual practice?

*Excerpts from Pretrial Hearing on Motions.*

The Court: No, I don't consider permission necessary. There is no rule governing, or any custom or any Canon.

Mr. Humrickhouse: The Canon says specifically it can be done.

The Court: I can't order Mr. Jonas not to talk to you, or talk to you.

Mr. Humrickhouse: He will "talk to you," if you say

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it is all right. He wants to talk but refuses, in view of what Mr. Karp told him.

The Court: No, I am not going to say it is all right; that is, in effect, permission.

Mr. Humrickhouse: But according to your rule, he will talk.

The Court: No, I am not going to say that, or interject myself into it in any way.

Mr. Karp: I realize I need not answer this and I am not going to answer the inquiry they make, except I owe to the Court, in view of the manner in which the matter was presented, to say merely this: that Mr. Humrickhouse, Mr. Dickinson and Mr. Anderson know this: that they not only tried to talk, to interrogate Mr. Jonas, but that when Mr. Jonas referred the gentlemen to his lawyer—a Mr. Williams, who I daresay, I never have met—and Mr. Williams advised them that, in the interest of his client, he could not advise his client to be interviewed or interrogated by Mr. Anderson or his co-Counsel; and that, not only once did the Gentlemen make an effort to talk to Mr. Jonas' lawyer, but on other occasions did they make that effort, and not only directly but indirectly, through the attempt to obtain intercession of other parties, and not once did they make that attempt, or those attempts, in consultation with the prosecution; and I would like to say this: that not



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only have they undertaken to contact Mr. Jonas, but others who handed over documents to the government voluntarily, telling such people that "they had better get them back, to tell the government the government had had them long enough and to get them back," that they would be required to testify, et cetera.

I am not making complaints, not charging any wrongful action against Counsel, but I merely want to make this statement, in view of what has been said here today.

Mr. Humrickhouse: So we will keep the record straight: We haven't made any attempts through any interceder's assistance to have Mr. Williams change his mind. Mr. Williams advised us your ruling was Mr. Jonas should not talk to us; that is what we tried to clarify. We went to see Mr. Williams—nothing surreptitious—we knew he had talked to Mr. Karp.

Mr. Karp: (Interrupting) Mr. Williams talked to Mr. Karp?

Mr. Humrickhouse: Yes, on the telephone.

Mr. Karp: Mr. Williams talked to me only after Mr. Anderson talked to Mr. Williams and only after Mr. Anderson had written me the letter they refer to, asking me about the conversation between him and Mr. Jonas, and only then I made inquiry to find out what actually occurred; and I found out, not only did Mr. Anderson talk to Mr. Williams once but other times; and that, with the help of other lawyers in the

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locality, efforts were made to convince Mr. Williams to permit Mr. Jonas to be interviewed, Mr. Williams taking the position that Mr. Jonas would say what he had to say at the trial and that he should not be subjected to interrogation, either under oath or not under oath, in the course of an interview.

*Excerpts from Pretrial Hearing on Motions.*

Now I think that should be enough for Counsel. I think that should settle the matter. But they keep on, taking it up and writing, time after time, and it was only because of their persistent letters that Mr. Hansen, Assistant Attorney General, wrote that "If you want to take it up with the Court Mr. Karp will be glad to be there with you," not to burden the Court, but merely to settle the matter once and for all.

Mr. Humrickhouse: That is exactly what we went to do: but still no answer, what you have done, and the Court has ruled he doesn't want to rule further.

The Court: I don't think the Court has that power. A witness for one party, it is very unwise when he goes to talking to Counsel for the other party: he is just making trouble for himself. But I don't think it is a matter the Court can regulate.

Mr. Humrickhouse: I think you can regulate it, if Mr. Karp is telling witnesses that they are not permitted to talk to the defense.

Mr. Karp: That is a new twist.

The Court: I don't think Mr. Karp told them that,

as a matter of law.

Mr. Karp: You may be sure that was never said and has never been raised, until this very moment.

The Court: He probably urged them not to talk about this case to somebody else, and I have told witnesses that, myself, many times.

Mr. Karp: Mr. Jonas knows his rights, whether to talk or not to talk, not only through me, but his own Counsel, apparently.

*Excerpts from Pretrial Hearing on Motions.*

Hearing of October 28, 1957.

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Mr. Humrickhouse: Yes, Your Honor.

As we informed you on October 17th, it was the purpose of Pittsburgh Plate Glass Company and W. A. Gordon to file a formal Motion for Continuance, or postponement of the trial date in this case now set for November 18th; and we stated at that time that the reasons for the continuance would be set out fully in Affidavits attached to the formal Motion; and therefore, Your Honor set this morning as the time for the hearing on the Motion for Continuance.

The Court: Yes, sir.

Mr. Humrickhouse: And as you know, the motion was filed on October 22, 1957, and attached to the motion were the affidavits of Mr. Raymond B. Pearce, Managing Partner of A. M. Pullen & Company, and of Mr. Anderson, who is Assistant General Counsel of Pittsburgh Plate Glass Company; and those affidavits state, with some degree of particularity, the reasons we feel we are entitled to continuance or postponement of the trial date in this case.

I may say, at this juncture, Mr. Pearce is in the courtroom, if Counsel desire to question him at this time; but we think his evidence would be just an enlargement of his affidavit, and we don't propose to put him on to prove

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just what is said in the affidavit; but if he is questioned on how long it will take him to complete what he is doing, or the accounting project he is doing, we will be very happy to present him as a witness.

We have stated, Your Honor, in the Memorandum which was filed, and copies forwarded to you and government Counsel, and all other Counsel in the case, we have stated really and simply our reasons for asking for continuance.



*Excerpts from Pretrial Hearing on Motions.*

As I said, at the last Hearing, on October 17th, this came as a surprise to us. We thought, we hoped we would be ready: we thought we would be ready on November 18th for trial. We have been working, ever since the Indictment was returned on the defense of this case and there is no question about the diligence that has been used.

The Court: Mr. Humrickhouse, let me interrupt you there: I think that is the primary question, your diligence or lack of diligence. You say you have been working ever since the Indictment was returned; this Indictment was returned—what date?

Mr. Humrickhouse: March 16, 1957.

The Court: And according to the affidavits submitted to me, it wasn't until May, two months later, you started investigating the line of testimony you now state you are now investigating: in your own affidavits, two months elapsed before you did anything.

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Mr. Humrickhouse: I don't want to question Your Honor's computation of time, but I think you will find less than two months.

The Court: From sometime in March to the beginning of May.

Mr. Humrickhouse: From sometime in March to the beginning of May, with only April intervening.

The Court: All right, Sir.

Mr. Humrickhouse: I was going to tell you, before you interrupted, though I am glad you did, that the project was in contemplation and began on April 15th—and Mr. Anderson has searched his files and it does not say that in his affidavit. He has found a memorandum, which he showed me this morning, which was sent out on April 17, 1957, and it was in connection with an accounting project that was to be done, and it said, in his memorandum:

“Under the proposed accounting project the defendants in this action plan to defend themselves

*Excerpts from Pretrial Hearing on Motions.*

against the charges in the Indictment. In order to plan their defense, it is necessary their Counsel ascertain fully at what prices their clients made sales to manufacturer customers during the period involved. This information can be obtained only by careful detailed analyses of all orders

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from furniture manufacturer customers; all invoices covering shipments pursuant to such orders, and all retroactive discounts, rebates on credit memorandums granted in connection with sales pursuant to such orders." (As read by Mr. Humrickhouse)

Now Mr. Anderson has asked me to say he has a slight touch of laryngitis, but if it becomes necessary he will be glad to answer the Court; he apologizes for not being able to.

But that further shows to me the due diligence.

I take it, Your Honor doesn't question the relevancy of the evidence or project?

The Court: I am frank to say you haven't demonstrated to me, at all, the materiality of the evidence; but we will pass that, for the time being, because I am impressed with the fact, from this affidavit, there is very serious question as to whether you have been diligent at all in attempting to get this information.

Mr. Humrickhouse: Your Honor Please, I can only say, and read into the record the chronology which is in our brief, which I am sure Your Honor has read?

The Court: Yes, sir.

Mr. Humrickhouse: Or, briefly?

The Court: Yes, sir.

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Mr. Humrickhouse: Now Your Honor will understand, I am sure, that this project is a project which contemplates the studying of the records of all of the co-defendants,



*Excerpts from Pretrial Hearing on Motions.*

not the records of our clients but the records of all co-defendants.

The Court: Yes.

Mr. Humrickhouse: And Your Honor knows that some of the co-defendants tendered pleas of *nolo contendere* and they were rejected, and during that time, when that was under consideration, we were denied access to their records, so we issued subpoenas *duces tecum* to these three or four companies: Mount Airy, Galax, Weaver—and Pittsburgh began the project on May 6, 1957; that is when the project was begun, when Mr. Pearce was hired and, had the other companies joined in at that time, there would have been no question about the ability to finish the project by November 18th, the scheduled trial date.

So, what have we done that is dilatory, in the meantime, from the date that we hired Pullen & Company?

We challenge the record, we vouch the record for our diligence in trying, from May 6, 1957, to get this project completed.

We don't want a continuance in the case except for the fact that we need a continuance in order to properly present the evidence, which is necessary under the Indictment

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to defend.

Now if Your Honor Please, we have said, and we said in the Memorandum why we thought it was relevant. Your Honor said we should skip over that for a minute, but it is so relevant, Your Honor, that to deny to us will prejudice our defense, it will be a denial of process to us, because we will not be entitled to evidence under the Eighth Amendment of the Constitution for our defense. If we had waited until November 1st, nay even if we had waited until today to advise you of it, maybe we would have been guilty of a couple of weeks of lack of diligence; but Your Honor, we notified you at the earliest moment at which we determined that the matter couldn't be finished by November 18th.

*Excerpts from Pretrial Hearing on Motions.*

The Court: About ten days ago.

Mr. Humrickhouse: Yes, it was about eleven days ago we notified you, but we didn't find out about it until the 14th and we notified you on the 17th.

The Court: About what?

Mr. Humrickhouse: The conclusion that the accountants had reached that they could not finish by November 18th, and that is the point——

The Court: (Interrupting) Yet you employed them back in May?

Mr. Humrickhouse: Yes, Your Honor, we employed them for the entire project, but what did we have to work on?

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We didn't have any records to work on but our records: Galax, Mount Airy and those of Weaver, the records of Stroupe, Virginia and Carolina were denied us.

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Mr. Karp: Very well. Then I will address myself to those matters.

First, Your Honor, I wish to point out that the so-called "evidence of data" which Counsel are talking about, has not been shown to be material. There has been no effort

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to show just what the "data" will demonstrate, what it will prove, or how material it would be to the defense of the charges in the Indictment. We can, at best, surmise that defendants wish to gather certain data pertaining to sales of mirrors made to customers and as to whether or not the conspiracy charged in the Indictment, conspiracy involving the agreement on discounts and the use of the list books from which discounts were applied, was successful. That is the most we can gather, from what they are saying here. They want data for the purpose of ascertaining the extent to which the conspiracy succeeded.

*Excerpts from Pretrial Hearing on Motions.*

Now if Your Honor Please, we know that the law is well settled, that "conspiracy" under the Sherman Act, is not dependent upon any overt act, other than the act of conspiring. The Supreme Court laid down that principle in the very early days of the Sherman Act.

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Mr. Gibson: In praying for Motion for Continuance, we desperately need time for carrying the burden of preparation. We sought, to the best of our possible resources, in presenting and tendering to the Court our pleas of *nolo*, we sought to avoid this burden of preparation. We were opposed by the government and the Court denied us that opportunity to shorten the case. Here, we consider is possibly some reason for what the government calls 'dilatatory', a dilatory situation, when we are the ones, as far as we are concerned, who tried to shorten the whole proceedings, by getting out of it, but we couldn't get out of it.

By this Indictment, in which the government insists on this telescopic charge, that we began this conspiracy in

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1954 and it continued until some un-named, undefined date thereafter, which carries us past the period of heavy increase in statutory penalty, and we knew we could not, conscientiously, tender any plea of guilty, acting together on agreed prices, certainly by the time of the amendment of that statute, because we know our prices were competitive from then on, and we want to have an opportunity, since we have no choice but to defend ourselves on that allegation, to prove it to the Court and to prove it to the Court, we have to break down our records, by analyses. We just can't look at a book and find from the books what was our price in July 1955 or August 1955. We can't do that. We have to make analyses, which we had hoped to avoid doing, in common with any other competitors, or goldfish



*Excerpts from Pretrial Hearing on Motions.*

bowl, our own customers. We sought to shorten that burden, but we can't.

We earnestly lay ourselves on the Mercy of the Court as in need. We cannot understand how the ends of Justice will be impaired by giving us time we so earnestly need for a just trial.

As to the investigation, to begin with we had to look at more than prices; we had to look at what was supposed to be meetings, conferences, communications; we have this discovery: we have got literally thousands of documents from the government that had nothing to do with this case, but we had to wade through it all.

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So by summertime, we came to the conclusion the only kind of defense that we could possibly make, which would really do the job of 'proving a negative,' that old, difficult job of 'proving a negative,' that I am not in agreement with, is by this massive proof, the 'positive' of showing our price competitive situation. The records wouldn't tell us, except by analyses, and getting the benefit of showing what everybody else's prices were.

At that point, we went to the government. We said "That is exactly the situation. Perhaps the government can't agree with us and maybe it is stuck with the conviction that we continued to act in maintaining uniform prices. We know we did not, but in any case we have the burden, with a small staff and disruption of our business, which we do not want to assume unless we are forced to." And we discussed it with the government, our pleas of *nolo contendere*, and whether they would recommend it to the Court but the government denied it and the Court denied it, so that left us in a position, whether guilty or innocent, we had no choice but to defend our case. We did study Your Honor's Opinion and it did seem, to us, some basis on which to discuss it further. We had a conference with you in September.

*Excerpts from Pretrial Hearing on Motions.*

We have, now, no other choice than to prepare our case and that we ask the Court to give us time to prepare.

\*     \*     \*     \*     \*

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Mr. Holton: On behalf of the Stroupe Mirror Company, we would like to emphasize the remarks Mr. Gibson made, particularly regarding the Indictment.

The Indictment charges that we conspired, in October or before, and we assume the government has direct proof of that, but we have direct proof we did not. But that is aside from this question of price behavior, if Your Honor Please. The Indictment then alleges 'continuing thereafter,' and we don't have a defense to that unless we are allowed to introduce to this Court evidence of price behavior in a manner that is intelligible to the Court and the jury.

If Your Honor Please, the reason we don't have that information is that we spent a substantial amount of time trying to change our plea from 'Not Guilty' to *nolo contendere*. We may have made an error of judgment but we made the decision and we followed it through.

We don't, therefore, have the information which we believe is a defense; we are told it will not be available by November 18th and we respectfully ask Your Honor to give us permission to prepare this case.

\*     \*     \*     \*     \*

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Mr. Gilmer: If your Honor will recall, preceding the time we discussed with you and Counsel for the government pleas of *nolo contendere*, and after the *nolo contendere* hearing, I think you will recall and the record will show, one of the main reasons we were interested in the *nolo contendere* plea, in addition to the civil matters you discussed, was the fact, as we told the Court, in our opinion to go into the defense of this case, as we felt it



*Excerpts from Pretrial Hearing on Motions.*

would have to be gone into, that if we did do so, regardless of anything else, it would be an enormous and tremendous expense on the part of the Carolina, the man hours' time it would take would be so

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enormous and at a tremendous expense on the part of the Carolina so great, that taking all those things into consideration, we felt the best thing to do was to attempt to enter a plea of *nolo contendere*, and I think this Court will agree, before you ruled, we had every reason to believe, even over objection of Counsel, that that plea was going to be accepted.

I will say, frankly, to your Honor, I advised my clients that I thought the plea would be accepted. Of course we couldn't tell them, any more than give our opinion about it. We tried to look into cases to see what had gone on in similar cases. So we thought this Court, over the objection of Counsel, would accept those pleas.

So that explains the reason why Carolina, and I think to some extent Stroupe as well as Virginia, because we are all in the same boat, so to speak, in that regard. There were certain things we didn't do before that plea was finally ruled upon, and the fact we thought it was going to be accepted was a mistake in judgment, and we hope you will not penalize our clients in this regard, because of error in the judgment of Counsel in that regard.

When it became apparent to us, because of Mr. Karp's, government's Counsel, statement here in open court, in which he was charging 'continuing conspiracy' that overlapped the Act of Congress in July of 1955, that in view of that there was no possibility of getting any agreed statement of fact out

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of government Counsel because he stated that is what he charged in the Indictment.

So then, Mr. Joyce conferred with you again with the District Attorney, to see what sort of evidence we might

*Excerpts from Pretrial Hearing on Motions.*

get together to try to get another hearing, maybe, and re-present such a plea, but it became apparent that would be impossible.

As soon as we found out our pleas of *nolo contendere* would not be accepted, we began an internal audit, ourselves, of our records. We began that audit, and after going over some three or four months of the records, it became apparent to the Carolina it was too enormous a job: we didn't have the man power; we didn't have the staff, in order to do it; and we would have to go, then go into the audit by Certified Public Accountants, and experts in that field.

So I say to Your Honor, we feel that we have done everything we could, after we found out our pleas would not be accepted, to get ready for trial on the 18th. We started an internal audit, with that in mind, to get our records together but found it impossible.

So in addition to the reason those reasons, we adopt, on behalf of Carolina, the reasons as stated by Counsel for these other defendants; and for the reasons I have just given you, we earnestly plead to Your Honor to give us the time to get these records in shape so as to, not only to present our case to the Court and jury, but to conserve the time of the

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Court and jury, and expenses all the way 'round, to try to dispose of this matter.

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Mr. Karp: I wanted to remark:

It is quite obvious, from what Counsel have said, that there is no question about a conspiracy here, that there is a play now as to whether all the means can be proved, which of course need not be done, in *U. S. vs. Nash and Others*; all we have to do is to show a conspiracy.

*Excerpts from Pretrial Hearing on Motions.*

Now what they want to do is to fish around, to see if they can show some pattern as to whether the conspiracy was completed, and successful. Not 'completed' but 'successful.' Now that is immaterial, in itself.

Now I merely want to submit that whether they plead bad error or anything along that line, the defendants have demonstrated a lack of diligence, to the extreme, and that there is no justification for continuing the trial.

The government has already served most of its subpoenas; the Court has other business to perform, and the defendants were told so. I read the pertinent parts of the record where it was completely stated that the trial would be definitely on November 18th, and they should have had their eyes towards it, and the fact that they have certain excuses as to judgment or delay is not material in the exercise of the Court's discretion, denying the Motion for Continuance.

• • • • •



**Pittsburgh Plate Glass Company Motion For  
Continuance Dated October 22, 1957.**

IN THE  
**UNITED STATES DISTRICT COURT**  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON

Criminal  
Action  
No. 5790

**Motion for Continuance**

Come now the defendants Pittsburgh Plate Glass Com-  
pany and W. A. Gordon, by their attorneys, and respectfully  
move the Court for the postponement of the trial date in  
this action now scheduled for November 18, 1957 upon the  
ground that there is not sufficient time before the trial date  
in which to complete the preparation for the defense of the  
charges in this case.

In support of this motion, there are attached herewith  
the affidavits of Cyrus V. Anderson (Exhibit A) and R. B.

*Pittsburgh Plate Glass Company Motion for  
Continuance Dated October 22, 1957.*

Pearce (Exhibit B) which are prayed to be read as a part  
hereof.

Dated: October 22, 1957

Respectfully submitted,

PITTSBURGH PLATE GLASS COMPANY

By (s) W. A. DICKINSON

W. A. DICKINSON, Of Counsel  
1106 Colonial Bank Building  
Roanoke, Virginia

HAZLEGROVE, SHACKELFORD & CARR  
1106 Colonial Bank Building  
Roanoke, Virginia

GEORGE R. HUMRICKHOUSE  
American Building  
Richmond 19, Virginia

LELAND HAZARD  
CYRUS V. ANDERSON  
RICHARD C. PACKARD  
One Gateway Center  
Pittsburgh 22, Pennsylvania  
Counsel for Pittsburgh Plate Glass Company

CERTIFICATE OF SERVICE

I hereby certify that I have today served a copy of the  
foregoing motion for continuance on Samuel Karp, Esquire,  
Attorney, Department of Justice; John Strickler, Esquire,  
United States Attorney; and on counsel of record for all  
the co-defendants herein by mailing copies of the same to  
them at their respective postoffice addresses.

(s) W. A. DICKINSON  
W. A. DICKINSON



**Exhibit A, Annexed to Motion for Continuance Dated  
October 22, 1957.**

**Affidavit of Cyrus V. Anderson,  
Sworn to October 22, 1957**

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE**

**UNITED STATES OF AMERICA**

**v.**

**PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON**

**Criminal  
Action  
No. 5790**

**COMMONWEALTH OF PENNSYLVANIA } to-wit:  
COUNTY OF ALLEGHENY }**

**CYRUS V. ANDERSON, being duly sworn, deposes and says:  
that he is Assistant General Counsel of Pittsburgh Plate  
Glass Company (PPG), one of the defendants herein.**

**Deponent makes reference to the following allegations  
in the indictment in this action:**

**1. A "combination and conspiracy" [Paragraphs  
11, 12 and 13]**

**2. Which "has consisted of a continuing agree-  
ment" [Paragraph 12]**

*Exhibit A, Annexed to Motion for Continuance  
Dated October 22, 1957.*

3. "[T]o stabilize and fix prices" [Paragraph 12]
4. "[F]or the sale by defendant corporations . . . of plain plate glass mirrors to furniture manufacturers" [Paragraph 12]
5. "By agreeing upon and applying in pricing . . . a uniform discount" [Paragraph 12(b)]
6. "[T]he amount of which discount, from time to time, has been changed by agreement" [Paragraph 12(b)]
7. "During the period . . . covered by this indictment . . . the defendants by agreement . . . have done the things . . . they conspired and agreed to do." [Paragraph 13].

In the light of these allegations, evidence of the prices actually paid by furniture manufacturers to the various defendants during the period of the alleged conspiracy is directly relevant to the charges in the indictment and, therefore is essential to the preparation of the defense. Such evidence of defendants' price behavior bears upon any number of issues, e.g., the existence or non-existence of a conspiracy; the participation of a given defendant in a conspiracy; the credibility of witnesses; and even the withdrawal of a participant from a conspiracy (in which event subsequent acts or declarations of the persons withdrawing would no longer be admissible against the remaining defendants).

To determine the defendants' price behavior during the period of the alleged conspiracy necessitates an analysis and review of all orders, acceptances, correspondence respecting orders, and invoices, and also tracing each applicable transaction through all books of account to determine whether the invoice price was subject to additional discounts, rebates or allowances.

*Exhibit A, Annexed to Motion for Continuance  
Dated October 22, 1957.*

On or about May 6, 1957, A. M. Pullen & Co., certified public accountants of Greensboro, N. C., were retained to conduct a preliminary survey in the respective places of business of all corporate defendants to determine, among other things, the approximate number of man-days which would be required to analyze all sales of plate glass mirrors made by each such defendant to its furniture manufacturer customers during the period from January 1, 1953 to March 26, 1957. Upon completion of this preliminary survey, defendants Carolina Mirror Corporation (Carolina), Stroupe Mirror Company (Stroupe) and Virginia Mirror Company, Incorporated (Virginia) withdrew from a proposed project which would have consisted of an analysis of price behavior of all defendants. In so withdrawing, counsel for Carolina, Stroupe and Virginia advised deponent that they were then considering changing their clients' pleas from not guilty to *nolo contendere*.

On or about June 4, 1957, counsel for Galax Mirror Company (Galax), Mt. Airy Mirror Company (Mt. Airy) and Pittsburgh Plate Glass Company (PPG) decided to institute an analysis of the price behavior of their respective clients, and A. M. Pullen & Co. was engaged to make this analysis.

On June 17, 1957, PPG caused a subpoena *duces tecum* to be served on Stroupe and on June 19, 1957, subpoenas *duces tecum* were caused to be served on Carolina and Virginia. The documents called for in each of these subpoenas included all documents and other records pertaining to quotations, sales prices and pricing of plate glass mirrors to furniture manufacturers for the period January 1, 1950 to March 26, 1957.

In response to oral requests of counsel for PPG that the subpoenaed documents be made available to representatives of A. M. Pullen & Co. at their respective places of business, counsel for Carolina, Stroupe and Virginia each advised on June 26, 1957 that consideration of such



*Exhibit A, Annexed to Motion for Continuance  
Dated October 22, 1957.*

requests would be postponed until a ruling had been obtained on their motion to change pleas from not guilty to *nolo contendere*.

On June 28, 1957, PPG caused a subpoena *duces tecum* to be served on Weaver. The subject matter of the documents called for by this subpoena was identical to that contained in the said subpoenas previously served upon Stroupe, Carolina and Virginia. Shortly after this subpoena was served, counsel for Weaver agreed to make available the subpoenaed documents to representatives of A. M. Pullen & Co., at Weaver's place of business.

During the period from July 8 to on or about August 20, 1957 representatives of A. M. Pullen & Co. reviewed the pricing and accounting records of Galax, Mt. Airy, Weaver and PPG (High Point, N. C. and Roanoke, Va.), at the respective offices of each and thereafter recorded on cards the pricing information so obtained relative to all sales made by each such defendant mirror manufacturing company to its furniture manufacturer customers during the period from January 1, 1953 to March 26, 1957.

On August 6, 1957, the motions of Carolina, Stroupe and Virginia to change their pleas of not guilty to *nolo contendere* were denied.

During the period from August 7 to August 28, 1957, counsel for PPG renewed PPG's request for pre-trial inspection of subpoenaed documents and was advised by counsel for Carolina that Carolina, Stroupe and Virginia had not yet reached a final determination respecting this matter.

On August 28, 1957, PPG wrote letters to counsel for Carolina, Virginia and Stroupe requesting that PPG be advised by September 9 if each would make available his client's subpoenaed documents for inspection at his client's office on or before September 16. This request was not complied with, and on September 18, 1957, PPG moved the

*Exhibit A, Annexed to Motion for Continuance  
Dated October 22, 1957.*

Court for pre-trial inspection of the subpoenaed documents of Carolina, Stroupe and Virginia.

Under date of September 27 and October 3, 1957, respectively, Virginia and Carolina filed motions to quash the subpoena *duces tecum* served upon each of them on June 19, 1957. These motions to quash and PPG's motion for pre-trial inspection of subpoenaed documents of Carolina, Stroupe and Virginia were set down for a hearing to be held on October 17, 1957.

On October 11, 1957, counsel for Carolina, Stroupe and Virginia notified counsel for PPG that their clients would permit representatives of A. M. Pullen & Co. access to the subpoenaed documents at their respective places of business without the necessity for a ruling on the subpoena *duces tecum* which PPG had previously caused to be served upon each of them. Accordingly, the said subpoenas *duces tecum* were withdrawn.

Later on October 11, 1957, counsel for PPG advised Mr. R. B. Pearce of the decision of Carolina, Stroupe and Virginia, and Mr. Pearce stated that he would have representatives of A. M. Pullen & Co. at the offices of Stroupe and Virginia on Monday, October 14 and at the office of Carolina on Tuesday, October 15.

Later on October 15, 1957, counsel for PPG was informed by Mr. R. B. Pearce that his work could not be completed at Carolina, Stroupe and Virginia by November 18, 1957, the scheduled trial date.

Upon the completion of the initial accounting work by Mr. Pearce and his associates, it will be necessary, first, to collate in an orderly manner the actual price behavior of each corporate defendant and to compare such price behavior among the several corporate defendants. When this has been done, the results must then be compared with the specific allegations in the indictment. Finally, it will be necessary to organize these data in such form that they



*Exhibit A, Annexed to Motion for Continuance  
Dated October 22, 1957:*

will be readily understandable to the jury and thereby enable the defense of this action to be presented in the shortest possible time. It is estimated that the aforesaid collation, comparisons, and organization of data for presentation at the trial will require an estimated four to six weeks' time after the initial accounting work has been completed. This estimate has been arrived at after consultation with the economist who is advising with counsel for PPG and Gordon in the defense of this action.

/s/ CYRUS V. ANDERSON

Sworn and subscribed to before me in the City of Pittsburgh, Commonwealth of Pennsylvania, this the 22nd day of October, 1957.

/s/ LILY D. HARP  
Notary Public

(Seal of Notary)

My commission expires:  
March 6, 1959.

**Exhibit B, Annexed to Motion For Continuance Dated  
October 22, 1957.**

**Affidavit of R. B. Pearce, Sworn to October 22, 1957.**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE

UNITED STATES OF AMERICA

*v.*

PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON

Criminal  
Action  
No. 5790

COMMONWEALTH OF VIRGINIA }  
CITY OF ROANOKE } to-wit:

R. B. PEARCE, being duly sworn, deposes and says: I am a partner in the firm of A. M. Pullen & Co., certified public accountants, Greensboro, North Carolina.

During the period May 8, 1957 to May 16, 1957, I visited the offices of Carolina Mirror Corporation, Galax Mirror Company, the High Point Warehouse of Pittsburgh Plate Glass Company, Mt. Airy Mirror Company, Stroupe Mirror Company, Virginia Mirror Company, and Weaver Mirror Company.

In the course of these visits I made a preliminary survey of the records of these companies relating to sales of plate

*Exhibit B, Annexed to Motion for Continuance  
Dated October 22, 1957.*

glass mirrors to furniture manufacturers. The purpose of this survey was to make an evaluation of the number of man days of accountants' time, which would be required in order to make a comprehensive analysis and tabulation of the final prices obtained by each of said companies in sales of plate glass mirrors to furniture manufacturers, during the period January 1, 1953 to March 26, 1957.

This preliminary survey showed, among other things, that to conduct such an analysis of the records of Carolina Mirror Corporation, Stroupe Mirror Company and Virginia Mirror Company would require a review of the approximate number of items listed below:

Carolina.....	20,000 items
Stroupe.....	3,600 "
Virginia.....	7,000 "

An "item", as used in this connection, means an individual billing of each size and type of plate glass mirror sold to a furniture manufacturer.

Based upon that survey, I estimated that an analysis and tabulation of all such items shown in the records of Carolina Mirror Corporation, Stroupe Mirror Company and Virginia Mirror Company would require 306 man days, broken down as follows:

	Carolina	Stroupe	Virginia
Man days of accountants—Total (by company)	200	36	70

In order to determine the final prices actually obtained by each of said companies in sales of plate glass mirrors to furniture manufacturers it is necessary to analyze not only purchase orders, acceptances, correspondence respecting orders, and invoices, which show the ostensible sales prices paid, but also to trace all transactions through the entire books of account in order to discover any rebates, credits, allowances, and additional discounts which must be taken into account in order to determine such final prices.



*Exhibit B, Annexed to Motion for Continuance  
Dated October 22, 1957.*

On October 11, 1957, I was advised by Cyrus V. Anderson, Assistant General Counsel for Pittsburgh Plate Glass Company, that he had obtained permission from Carolina Mirror Corporation, Stroupe Mirror Company and Virginia Mirror Company, Incorporated for me and my associates to review on their premises the books and records of each of the companies for the purpose of making a comprehensive analysis and tabulation of the final prices obtained by each of said companies in sales of plate glass mirrors to furniture manufacturers during the period January 1, 1953 to March 26, 1957.

On October 14, 1957, representatives of A. M. Pullen & Co. made a further survey at Virginia and Stroupe of the number of items to be analyzed, and on October 15, 1957, I made a similar survey at Carolina.

After the completion of the field work at Carolina, Stroupe and Virginia, it will be necessary to collate in an orderly manner the actual price behavior data of each corporate defendant and to compare such price behavior among the several corporate defendants. This will require 144 man days of accountants' time, which are in addition to the above-stated 306 man days. Accordingly, a total of 450 man days of accountants' time will be required for a study and analysis of the material surveyed. Translated into calendar days, using the maximum feasible number of accountants for the prompt and accurate completion of the accounting study, a minimum of 59 calendar days, or ten six-day weeks, is required.

/s/ R. B. PEARCE

Sworn and subscribed to before me in the City of Roanoke, Commonwealth of Virginia, this the 22nd day of October, 1957.

/s/ LILY D. HARP  
Notary Public

(Seal of Notary)

My commission expires:  
March 6, 1959.

**Pittsburgh Plate Glass Company Motion For  
Continuance Dated November 18, 1957.**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON

Criminal  
Action  
No. 5790

**Motion for Continuance**

Come now the defendants Pittsburgh Plate Glass Com-  
pany and W. A. Gordon, by their attorneys, and respect-  
fully move the Court for a postponement of the trial of  
this action now scheduled to begin this date, November  
18, 1957, upon the ground that said defendants have not  
been afforded sufficient time to complete their preparation  
for the defense of the charges in this case.

In support of this motion, there are attached herewith  
the affidavits of R. B. Pearce (Exhibit I) and Cyrus V.



*Pittsburgh Plate Glass Company Motion for  
Continuance Dated November 18, 1957.*

Anderson (Exhibit II) which are prayed to be read as a part hereof.

Dated November 18, 1957..

Respectfully submitted

PITTSBURGH PLATE GLASS COMPANY

W. A. GORDON

By /s/ W. A. DICKINSON

W. A. Dickinson, Of Counsel  
1106 Colonial Bank Building  
Roanoke, Virginia

HAZLEGROVE, SHACKELFORD & CARR  
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LELAND HAZARD

CYRUS V. ANDERSON

RICHARD C. PACKARD

One Gateway Center

Pittsburgh 22, Pennsylvania

Counsel for Pittsburgh Plate Glass Company  
and W. A. Gordon

**Exhibit I, Annexed to Motion For Continuance Dated  
November 18, 1957.**

**Affidavit of R. B. Pearce, Sworn to November 17, 1957.**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE

UNITED STATES OF AMERICA

v.

PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON

Criminal  
Action  
No. 5790

COMMONWEALTH OF VIRGINIA }  
CITY OF ROANOKE } to-wit:

R. B. PEARCE, being duly sworn, deposes and says: I am a partner in the firm of A. M. Pullen & Co., certified public accountants, Greensboro, N. C.

Reference is made to my affidavit dated October 22, 1957, which was designated Exhibit B to motion for continuance of defendants Pittsburgh Plate Glass Company and W. A. Gordon, dated October 22, 1957 (hereinafter referred to as "my affidavit of October 22, 1957").

During the period from October 14, 1957 to November 1, 1957, representatives of my firm performed the following work in connection with the price behavior study referred to in my affidavit of October 22, 1957:

*Exhibit I, Annexed to Motion for Continuance  
Dated November 18, 1957.*

1. At Carolina Mirror Corporation (Carolina)—reviewed 7,200 items (individual billings of each size and type of plate glass mirror sold to furniture manufacturers) covering the period from October 1, 1954 to March 26, 1957. This required the utilization of 5-6 accountants who worked 518½ man-hours, or 65 man-days.

2. At Stroupe Mirror Company (Stroupe)—reviewed 2,000 items covering the period from October 1, 1954 to March 26, 1957. This required the utilization of 2 accountants who worked 188 man-hours, or 23 man-days.

3. At Virginia Mirror Company (Virginia)—reviewed 2,450 items covering the period October 1, 1954 to March 26, 1957. This required 2-3 accountants who worked 277 man-hours or 34 man-days.

The foregoing fieldwork at Carolina, Stroupe and Virginia involved the review of a total of 11,650 items requiring a total of 973½ man-hours of 11 accountants, or 122 man-days.

During the period from October 19, 1957 to November 15, 1957, 3-6 accountants worked a total of 1,291 man-hours, or 161 man-days at our Greensboro, N. C. office collating the data received from the accountants in the field at Carolina, Stroupe and Virginia, punching McBee cards (which record pertinent data respecting each item), and preparing schedules requested by counsel.

On October 14, 1957, I was advised by counsel for Pittsburgh Plate Glass Company that because of time limitations, I should first complete the analysis of the price records of Carolina, Virginia and Stroupe for the period October 1, 1954 to March 26, 1957, before undertaking the analysis of such records for the period January 1, 1953 to October 1, 1954. The analysis of the price records of Galax Mirror Company, Inc., Mount Airy Mirror Company, Pittsburgh Plate Glass Company, and Weaver Mirror Company



*Exhibit I, Annexed to Motion for Continuance  
Dated November 18, 1957.*

covered the entire period January 1, 1953 to March 26, 1957.

In order to complete the accounting study of the price records for the aforesaid seven companies for the full period January 1, 1953 to March 26, 1957, the following additional work by representatives of my firm is required:

1. Review an estimated total of 8,250 items (5,100 items—Carolina; 1,400 items—Stroupe; and 1,750 items—Virginia).

2. This will require an estimated 783 man-hours' time of 11 accountants, or a total of 97 man-days. It is estimated that this field-work can be completed in 12 calendar days.

3. Upon the completion of this fieldwork, an additional 11 calendar days' time will be required of a minimum of 6 accountants, each working 11 hours per day, to collate the data obtained, punch McBee cards, and prepare schedules requested by counsel.

4. To complete the aforesaid accounting work necessary to include the period January 1, 1953 to October 1, 1954 will require an estimated 23 calendar days. Working 6-day weeks, it is estimated that this accounting work can be completed on December 14, 1957, provided that the field-work is begun on November 18, 1957.

/s/ R. B. PEARCE

Sworn and subscribed to before me in the City of Roanoke, Commonwealth of Virginia, this the 17th day of November, 1957.

/s/ LILY D. HARP  
Notary Public

(Seal of Notary)

My commission expires:  
March 6, 1959.

**Exhibit II, Annexed to Motion For Continuance Dated  
November 18, 1957.**

**Affidavit of Cyrus V. Anderson,  
Sworn to November 17, 1957.**

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
AT ROANOKE**

**UNITED STATES OF AMERICA:**

*v.*

**PITTSBURGH PLATE GLASS COMPANY; CAROLINA  
MIRROR CORPORATION; GALAX MIRROR COM-  
PANY, INCORPORATED; MOUNT AIRY MIRROR  
COMPANY; STROUPE MIRROR COMPANY; VIR-  
GINIA MIRROR COMPANY, INCORPORATED;  
WEAVER MIRROR COMPANY, INCORPORATED;  
EDD F. GARDNER, J. A. MESSER, SR. and  
W. A. GORDON**

**Criminal  
Action  
No. 5790**

**COMMONWEALTH OF VIRGINIA } to-wit:  
CITY OF ROANOKE**

CYRUS V. ANDERSON, being duly sworn, deposes and says:  
that he is Assistant General Counsel of Pittsburgh Plate  
Glass Company (PPG), one of the defendants herein.

Reference is made to my affidavit dated October 18,  
1957, which was designated Exhibit A to the motion for  
continuance of defendants Pittsburgh Plate Glass Com-  
pany and W. A. Gordon, dated October 22, 1957 (herein-  
after referred to as "my affidavit of October 18, 1957").

Reference is also made to the chronology of our efforts  
to complete the analysis of all corporate defendants' actual



*Exhibit II, Annexed to Motion for Continuance  
Dated November 18, 1957.*

price behavior at pages 6-8 of the memorandum in behalf of motion for continuance of Pittsburgh Plate Glass Company and W. A. Gordon (hereinafter referred to as "the memorandum"). Copies of the memorandum were forwarded to the Court and Mr. Karp under date of October 24, 1957, and filed at the hearing on October 28, 1957.

Since the date of my affidavit of October 18, 1957, I have again reviewed my files and have ascertained that certain actions were taken with respect to the price behavior study which were not recorded either in my affidavit of October 18, 1957 or in the memorandum. These actions, as well as those previously recorded, are as follows:

April 11, 1957 — Meeting of defendants' counsel at which the project of analyzing the actual price behavior of our corporate defendants was suggested for consideration.

April 12-23, 1957 — Investigation conducted to determine the availability of accounting firms with sufficient experienced personnel to undertake the proposed price behavior project. Ascertained that A. M. Pullen & Co., certified public accountants of Greenboro, N. C., would be available.

April 17, 1957 — Memorandum prepared by counsel for Pittsburgh Plate Glass Company outlining the proposed price behavior project.

May 6-June 14, 1957 — See page 6 of the memorandum for detailed chronology dealing with the preliminary survey made by A. M. Pullen & Co. and the decision by counsel for Galax, Mount Airy, and Pittsburgh Plate Glass to institute price behavior analyses.

*Exhibit II, Annexed to Motion for Continuance  
Dated November 18, 1957.*

June 14, 1957 —Counsel for Pittsburgh Plate Glass Company delivered to United States Marshal at Roanoke subpoenas *duces tecum* addressed to Carolina Mirror Corp., Stroupe Mirror Co., and Virginia Mirror Co., Inc., calling for the production of each such company's price behavior records at Roanoke, Virginia, on November 18, 1957, the scheduled trial date.

June 17-October 14, 1957 —See pages 6-7 of the memorandum for detailed chronology dealing with  
(a) PPG's efforts to obtain access to subpoenaed documents of Carolina, Stroupe and Virginia—voluntarily, and later by motion—which efforts were resisted by Carolina, Stroupe and Virginia until October 11, 1957; and  
(b) The activities of A. M. Pullen & Co. respecting the conduct of the price behavior study at Mount Airy, Galax and PPG (High Point, N. C. and Roanoke, Va.).

October 14, 1957—Counsel for Pittsburgh Plate Glass Company advised Mr. R. B. Pearce that, because of time limitations, A. M. Pullen & Co. should first complete the analysis of the price records of Carolina, Stroupe, and Virginia for the period October 1, 1954 to March 26, 1957, before undertaking the analysis of such records for the period January 1, 1953 to October 1, 1954.

On October 28, 1957, a hearing was held at Harrisonburg, Virginia, on motions for continuance filed by Pitts-

*Exhibit II, Annexed to Motion for Continuance  
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burgh Plate Glass and W. A. Gordon, and other defendants. These motions were denied. Thereafter, on October 30, 1957, counsel for Pittsburgh Plate Glass Company requested Mr. R. B. Pearce that, if feasible, his staff should work around the clock (night and day) using three shifts to expedite the completion of the study. Mr. Pearce informed counsel for Pittsburgh Plate Glass Company his men had been working an average of eleven hours per day each, and that all available manpower assigned to the project were working on an emergency schedule which represented the optimum output of his office.

The results of the work performed by A. M. Pullen & Co. with respect to the accounting study of the price records of Carolina, Stroupe and Virginia, as they are received, are forwarded to the economist who is advising with counsel for Pittsburgh Plate Glass Company and W. A. Gordon in the defense of this action. This economist then reviews these results, makes comparisons of the price behavior among the several corporate defendants and organizes the data in such form that they will be readily understandable to the Court and the jury, including the preparation of charts, so that the defense of this action may be presented in the shortest possible time.

It is estimated that 30 calendar days' time are required to integrate the data obtained from A. M. Pullen & Co. respecting the price records of Carolina, Stroupe and Virginia, covering the period October 1, 1954 to March 26, 1957. Working six-day weeks, it is estimated that this work can be completed on December 20, 1957. Even then important utilization of available data may have to be foregone because of time limitations.

It is further estimated that if the accounting work by A. M. Pullen & Co. covering the price records of Carolina, Stroupe and Virginia for the period January 1, 1953 to October 1, 1954 is completed by December 20, 1957, 15 calendar days' work will be needed by counsel and the



*Exhibit II, Annexed to Motion for Continuance  
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economist to have the price behavior data of Carolina, Stroupe and Virginia integrated with those of the other four corporate defendants in the form that they will be available for presentation to the Court and the jury. While the accountants' and economist's work will proceed continuously, it is not conceivable that any significant amount of time can be devoted to the preparation of this phase of the defense during the period the Government is presenting its case.

/s/ CYRUS V. ANDERSON

Sworn and subscribed to before me in the City of Roanoke, Commonwealth of Virginia, this the 17th day of November, 1957.

/s/ LILY D. HARP  
Notary Public

(Seal of Notary)

My commission expires:  
March 6, 1959

NOTE

Pages 784 - 785, are blank

[fol. 786] [File endorsement omitted]

[fol. 787]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

June Term, 1958

No. 7585

PITTSBURGH PLATE GLASS COMPANY; GALAX MIRROR COMPANY,  
INCORPORATED; MOUNT AIRY MIRROR COMPANY; and J. A.  
MESSER, Sr., Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal From the District Court of the United States  
for the Western District of Virginia

Appendix to Brief for the United States of America—  
Filed May 19, 1958

[fol. 791]

IN UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF VIRGINIA

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

E. H. MAYES, called as a witness on behalf of the Govern-  
ment, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Karp:



Q. Who are your superiors, Mr. Mayes?

A. J. A. Messer, Sr. and Junior.

Q. Are you related to them?

A. No, sir.

Q. Who is Mr. J. A. Messer, Sr.?

A. Who is he?

Q. Yes.

A. He is chairman of the board of Galax Mirror Company.

Q. You know him to be a defendant in this case?

A. Yes, sir.

Q. Is he also the chairman of the board of any other corporation, mirror corporation, that you know.

A. Yes. Mount Airy Mirror Company.

Q. Do you know Mr. J. A. Messer, Jr.?

A. I do.

Q. What is his position?

A. Vice chairman.

Q. Of what?

A. Of the Galax Mirror Company and the Mount Airy Company.

Q. And J. M. Cheek?

A. Yes.

[fol. 792] Q. What is his position, sir?

A. He is sales manager.

Q. Of what?

A. Of Mount Airy Mirror Company and Galax Mirror Company.

Q. Who is Mr. Sessoms, W. J. Sessoms?

A. He is president of the Mount Airy Mirror Company.

Q. Are those corporations also run by Mr. Messer, Sr.?

A. Yes, sir.

Q. And Mr. Messer, Jr., is he the son of Mr. Messer, Sr.?

A. That is correct.

Q. Is Mr. Cheek the son-in-law of Mr. Messer, Sr.?

A. Yes.

Q. Is Mr. Sessoms related to the Messers?

A. No, not that I know of.

Q. I think you testified, did you, that Mr. Messer is the effective management head of the Galax Mirror Corporation and Mount Airy Mirror Company?

A. He sets the policies.

Q. Does he set the policies for price?

A. Yes.

Q. Galax and Mount Airy?

A. Yes.

Q. Thank you. You would say he is the final authority on those policy matters, including price matters?

A. Yes, sir.

Q. And that would apply to plate glass mirrors including plate glass mirrors sold to furniture manufacturers?

A. Yes.

\* \* \* \* \*

[fol. 793] Q. Will you give the court and jury briefly a description of how the plate glass mirror is made?

A. I am in the office and don't actually have anything to do with the production end of the manufacturing of our factory.

Q. To your knowledge give a description of how it is made.

A. You take polished plate glass of mirror glazing quality, and it has to be scratch polished and all the scratches removed from it, and there is a number of operations that it goes through before the glass can be placed on the silvering conveyor. Many times the glass will have to be edged or beveled or engraved as the case may be. Many pieces of glass are run through without doing anything to them. They are called plain mirrors. They are washed thoroughly and there is a solution applied to the back of them, silver nitrate and so forth. Eventually it comes out a mirror. There is a number of backings, also.

Q. In pricing a mirror what system do you apply?

A. What system do we apply?

Q. Yes. How do you price a mirror?

A. We use a discount off the price list.

Q. Would that discount represent the plain plate glass mirror?

A. Yes.

Q. Suppose that plain plate glass mirror had bevels on the side.

A. Then we charge so much per lineal inch.

Q. Is that added to the price?

A. Yes.

Q. So when a beveled mirror or a plain plate glass mirror is ordered, you still use that list price book?

A. Yes.

[fol. 794] Q. You first figure the discount?

A. That is right.

Q. With the plain plate glass mirror?

A. Yes.

Q. Even in cases where the beveled mirror is ordered?

A. That is right.

Q. And then you add to the price of the plain plate glass mirror the additional cost for the work done in beveling?

A. That is correct.

Q. And you have one mirror, then, the beveled mirror still being one mirror?

A. That is right.

\* \* \* \* \*

Q. I think you testified in determining the price of a beveled mirror, you first determined the price of the plain plate glass mirror and that the plain plate glass mirror is the basic price regardless of whether it has beveling on it or anything else.

A. That is correct.

\* \* \* \* \*

#### Redirect Examination.

By Mr. Karp:

Q. Mr. Mayes, I want to direct my questions now to you with respect to October 29, 1954, and thereafter. First, do you recall the letter introduced in evidence dated October 29, 1954?

A. Yes.

Q. In which Galax, and in a similar letter, in which Mount Airy, announced a change in discount effective immediately to 78 per cent off the list price of 1950 for plain plate glass mirrors?

A. Yes.

[fol. 795] Q. You recall that?

A. Yes.

Q. That October 29, 1954, letter put into effect, did it



not, to furniture manufacturers at 78 per cent discount for plain mirrors?

A. Yes.

Q. So that was your prevailing price on October 29, 1954, was it?

A. Yes.

Q. And that prevailing price continued thereafter for some time?

A. For some three or four months, I believe.

Q. For some three or four months? Very well.

A. About three months, in fact.

Q. About three months. You referred to the three months now on the basis of the examination of Mr. Morison in which he showed you a letter dated January 27, 1955, Defendant's Exhibit No. 3?

A. Yes.

Q. And that letter purports to go out to the furniture trade, does it?

A. Yes.

Q. To announce an increase in price?

A. Yes, that was an increase.

Q. To 77 per cent?

A. And I do recall now that there was an increase and we actually shipped at that price.

Q. You do recall now?

A. Yes, sir.

\* \* \* \* \*

Q. You are not certain, are you, now, whether the 78 per cent discount did not in fact continue to prevail after January 27, 1955?

A. I believe that we shipped some mirrors at 77 off the list at this announced price. I believe we did. Our records would reveal.

[fol. 796] Q. You believe you did?

A. Yes.

Q. In any event, you are clear, are you, that the October 29, 1954, quotation of 78 per cent prevailed at least until January 27, 1955?

A. Not necessarily, sir, because I do know that our files reveal that sometimes Mr. Messer may have given somebody a cheaper price in order to keep their business.

Q. Yes.

A. Or in order to keep some other mirror manufacturer from taking a big furniture account away from us.

Q. We are talking now about the prevailing price.

A. I believe that was the prevailing price for about three months.

Q. And it may have gone further. The prevailing price might have actually gone beyond that.

A. Where you have more than one discount.

Q. Yes, and it could have gone up to July 1955, as indicated by a letter introduced through you this morning.

A. It could have.

Q. But after the prevailing quotation, as indicated this morning by the letter that went through, there was a price change from 78 to 77 per cent in July. You just testified to that, is that correct?

A. I think so.

W. J. SESSOMS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

[fol. 797] Cross Examination.

By Mr. Morison:

(For Galax Mirror Company, Inc., Mount Airy Mirror Company and J. A. Messer, Sr.):

Q. Do you recall the price announced in January?

A. There have been so many changes, without seeing it, I could not be absolutely sure, but I believe it was 77.

Q. What was the next announced price change that you recall in the year 1955? I will hand you Defendants' Exhibit No. 4, to refresh your recollection.

A. September 16.

Q. What is the price that is announced in that price announcement?



A. 77.

Q. Thus you had two announcements in one year, 1955, of 77. Will you explain to me why the price announcement of September 16, re-announcing the 77 price, was necessary?

Mr. Karp: I object to that question, why it was necessary. I don't know what it has to do with this case?

The Court: He may answer.

The Witness: As I recall, we made in January this price change. But unfortunately we didn't receive much business because of the competition that we were facing. We didn't receive much business at that price. We had to take some business at a lower price. However, there was a change, if my memory serves me correct, in plate glass prices prior to September—July or August, I believe it was—in which the price of plate glass, which constitutes about 50 per cent [fol. 798] of our raw material cost, was advanced. Whether we could get any business at 77 or not, we had to go to 77 or close the doors.

\* \* \* \* \*

W. C. BEELER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Karp:

Q. Will you state your name?

A. W. C. Beeler.

Q. Give the reporter your address for the record, please.

A. Martinsville, Virginia.

Q. By whom are you employed?

A. Virginia Mirror Company.

Q. In what capacity?

A. As vice president.

Q. Are you also general manager?

A. Yes, sir.

Q. How long have you held that position?

A. Since November of 1954.

Q. What position did you occupy with the company prior thereto?

A. Vice president in charge of production.

Q. Who is the president of the company?

A. Mr. M. R. Schottland.

Q. How long has he been president?

A. I couldn't answer that question.

Q. Has he been president at least since 1950?

A. Possibly so, yes.

Q. Are you the son-in-law of Mr. Schottland?

A. Yes, I am.

[fol. 799] Q. How long have you been employed with the Virginia Mirror Company?

A. Since December 1945.

Q. Who was president then?

A. I couldn't tell you who.

Q. Was Mr. Schottland?

A. Mr. Schottland and his brother used to alternate from year to year.

Q. I see. Was Mr. Schottland president in October 1954?

A. I presume so, yes.

Q. Has he been president since?

A. Yes, he has.

Q. And as such, was he in active management of the company?

A. Yes.

Q. Who was Kenneth A. Hearn?

A. Kenneth H. Hearn was vice president in charge of sales.

Q. Is he related to you?

A. His wife and my wife are sisters, yes.

Q. What capacity did Mr. Hearn have in the Virginia Mirror Company?

A. Vice president and sales manager.

Q. So that you succeeded him in November 1954 as vice president and sales manager?

A. I didn't succeed him, no. I took over his duties as well as my own.

Q. I see. How long has Virginia Mirror Company been in the mirror manufacturing business?

A. Since approximately 1913.

Q. Does it have any affiliates?

A. Yes.

Q. What are the affiliates?

A. The Pulaski Mirror Company.

Q. Any other affiliates?

A. No.

[fol. 800] Q. Does it have any financial interest to your knowledge in any other mirror manufacturing companies?

A. No, sir.

Q. Does it have an interest in Carolina Mirror Company?

A. No, sir.

Q. Does Mr. Schottland?

A. No, sir.

Q. Do you?

A. No, sir.

Q. Do your wives?

A. Yes, sir.

Q. What interest do your wives have in the defendant Virginia Mirror Company?

A. In the Virginia Mirror Company?

Q. In the defendant Carolina company, thank you.

A. I do not know exactly. I have known, but I forget the figures.

Q. Is it a substantial interest?

A. I would say so, yes.

Q. Has there been a business financial relationship between the companies over the years?

A. No, sir.

Q. You say there is a substantial interest by Virginia Mirror Company in Carolina?

A. Not by Virginia Mirror.

Q. By the daughters of—

A. Some of the stockholders are identical.

Q. By the daughters of Mr. Schottland.

A. Yes, sir.

\* \* \* \* \*

Q. In October 1954, was Mrs. Hearn a stockholder in Carolina Mirror Company?

A. I would presume so.

[fol. 801] Q. And Mr. Hern at that time was vice president sales manager of Virginia Mirror Company?

A. Yes, sir.

Q. Can you tell the Court and jury who the primary customers of your corporation with respect to the sale of plate glass mirrors including plain plate glass mirrors were?

A. The furniture manufacturers.

\* \* \* \* \*

Q. The terms 2 per cent, 10 net 30, is that a cash discount term?

A. It is usually considered a discount term. Some of your large customers will take it whether it is 10 or 30 days.

Q. That is the usual practice?

A. Yes.

Q. It had nothing to do with the 78 off the 1950 list price quotation?

A. It is 2 per cent off the net.

Q. The 2 per cent off the net would apply to the sale of other things sold by Virginia Mirror Company as well as plain plate glass mirrors?

A. Yes.

Q. That was the practice of the company?

A. That is right.

\* \* \* \* \*

Cross examination.

By Mr. Gibson:

\* \* \* \* \*

Mr. Gibson: The purpose I wish to make of this letter is to place before the witness the computations made as to discount prices at a given period to the Hooker Furniture Company, a case which was worked up at the request [fol. 802] of Government, simply to show the pricing in October 1954 and during 1955 and 1956 and show the times at which the discount changed to what figure.

The Court: As I understand it, you are not entirely accurate in saying that was worked up at the request of



the Government. They asked the witness to give them a general list of prices. He has prepared there a list of discounts which they gave to one customer during a period. Is that correct?

Mr. Gibson: That is correct.

The Court: Based on their dealing with one customer?

Mr. Gibson: That was prepared as a case history of that one customer, as an example, following a discussion between Mr. Beeler and Mr. Karp.

\* \* \* \* \*

Q. Mr. Beeler, I hand you a copy of a letter of January 3, 1957, directed by the Virginia Mirror Company to Mr. Karp, under your signature, identified as Defendants' Exhibit 6, and ask if you can look at the third sheet and tell us whether the figures on that sheet represent prices and discounts you have determined by the analysis you just described for a particular customer?

A. You want me to read it?

Q. First, is that a fact?

A. That is, yes.

Q. What customer was that?

A. This was the Hooker Furniture Corporation in Martinsville.

Q. I think you may have to speak a little louder.

A. Hooker Furniture Corporation of Martinsville, Virginia.

[fol. 803] Q. Are these, the discounts as given on this sheet, correct to the best of your knowledge and belief, from the preparation by the method you have described?

A. Only where they are marked as the source being invoices. Where they are listed as exhibits those are letters. This is a chronological listing of quotations and actual prices.

\* \* \* \* \*

Redirect examination.

By Mr. Karp:

Q. Mr. Beeler, you referred to sales of mirrors to Hooker Furniture Manufacturing Company.



A. Yes, sir.

Q. Is the Hooker Furniture Manufacturing Company a large furniture company? Is it a large manufacturer of furniture?

A. I would say so, yes.

Q. I show you an affidavit made by you dated February 8, 1957, and ask you if you can identify it?

A. Yes, sir; I can.

Q. Looking at page 11 of that affidavit, and the date July 16, 1954, discount 80, list 1950, what does that mean?

A. That means 80 per cent off the 1950 list.

Q. That would pertain to an invoice on July 16, 1954?

A. It would, yes.

Q. And pertain to an order taken before that date?

A. Yes.

Q. Would you look at the next item, January 13, 1955? Would that represent the next invoice?

[fol. 804] A. The next invoice.

Q. The next invoice date of mirrors?

A. Of a different discount, yes.

Q. Of a different discount?

A. Yes.

Q. That was January 13, 1955?

A. That is right.

Q. And that is what percentage?

A. 78.

Q. Off what list?

A. 1950 list.

Q. And then the next date is what?

A. February 23, 1955.

Q. And the discount, please?

A. 78.

Q. Per cent off what list?

A. 1950 list.

Q. And the next one is what?

A. March 9, 1955, 78 off the same list.

Q. So you were getting from Hooker Furniture Company these continuous orders and selling them at 78 per cent off the 1950 list?

A. No, sir.

Q. Then doesn't that mean this?

A. Those were taken from the invoices.

Q. Yes.

A. That is what the invoice showed. But the actual discount was 78, 5 and 2.

Q. You mean you had one invoice showing a discount and then actually charging a different price?

A. It did not show a discount. It showed the net price. These were arrived back at from a net price.

Q. Yes, but your invoice would contain the net price and not the discount?

A. That is right.

Q. But the net price is determined by a discount?

A. That is right.

[fol. 805] Q. So that on those dates, January 13, 1955, February 23, 1955, and March 9, 1955, you were still charging Hooker Furniture Manufacturing Company prices based on a 78 per cent discount off the list price, is that right?

Mr. Gibson: The witness said 78, 5 and 2.

Mr. Karp: I am asking the witness.

The Witness: The invoice would show 78 per cent off, but the remittance would be 78, 5 and 2.

By Mr. Karp:

Q. So you were charging the price pursuant to the October 29, 1954 letter on the record but actually giving him a rebate?

A. It was not a rebate, no. It was a discount.

Q. The net price was based on a 78 per cent discount?

A. The price shown on the invoice, yes.

Q. Did he pay that price?

A. No, sir.

Q. He paid less?

A. He did, yes.

Q. Then you actually let him pay you less than was charged?

A. Yes, sir.

Q. Is that the way you usually conduct business? I say this with all due respect. When you bill a customer at a

certain price, is it customary for you to get paid at the price billed?

A. Customarily, yes.

Q. You had a reason for charging one price on the invoice which would be equivalent to a 78 per cent discount and actually giving him a charge of a little less?

A. Yes, we did.

Q. You had a special reason to do that in the case of Hooker Furniture Company, did you?

[fol. 806] A. It probably developed through competition, yes.

Q. Now, as a matter of fact, Mr. Beeler, is not Mr. Schottland connected with Hooker Furniture Company?

A. In what way connected?

Q. I am asking you. Was he not connected? Let me ask you, was he not connected as a member of the board?

A. Yes.

Q. He is?

A. Yes.

Q. He has been a member of the board for a long time?

A. A good many years.

Q. And he is still a member of the board?

A. To the best of my knowledge.

Q. Mr. Schottland gave the Hooker Furniture Company a special and confidential discount customarily for many years, did he not?

A. That I could not answer.

Q. Let me show you this paper and ask you to refresh your recollection.

The Court: Who is Mr. Schottland?

Mr. Karp: Mr. Schottland is president of the Virginia Mirror Corporation, and the witness has testified that he is also a member of the board of directors of Hooker Furniture Company.

The Court: All right.

\* \* \* \* \*

By Mr. Karp:

Q. Your recollection is refreshed?

A. Yes, very definitely.



Q. Now that you have refreshed your recollection, Mr. Beeler, was it not customary for Mr. Schottland to give [fol. 807] to the Hooker Company a special confidential discount, and was that not on plain plate glass mirrors?

A. Yes.

Q. Was that not an arrangement which was continued in effect for many years past?

A. That I could not answer.

Q. I show you this paper and ask you to refresh your recollection whether you, Mr. Beeler, had not entered into similar arrangements with Hooker Furniture Company?

A. Yes, I have.

Q. Were not those special arrangements in effect for several years in the past?

A. Yes.

Q. And that was in effect prior to October 29, 1954?

A. I would say so, yes.

Q. And it was in effect—

A. That I would not know exactly.

Q. Your arrangements were in effect after October 29, 1954?

A. Yes.

Q. Looking at this paper, would you not say that it was in effect at least until August 9, 1955?

A. Yes, I would.

Q. Now, then, would that explain, Mr. Beeler, why your invoices would show a 78 per cent discount in January, February and March of 1955, and you might actually have charged him less?

A. In what way do you mean would that explain that?

Q. The fact that you gave a regular cash discount off the 78 per cent discount, would that not explain that situation?

A. This type of thing is fairly common in the industry.

Q. I am asking you now about the Hooker Furniture Company.

[fol. 808] A. I don't quite understand your question.

Q. Your counsel brought out through you that you had submitted to the Grand Jury or to me acting as counsel for the Grand Jury, a record of discounts or list of discounts charged to one customer which would be typical, and you chose Hooker Furniture Company. Now I ask you

whether it could be typical in view of the special arrangements you and Mr. Schottland had with Hooker Furniture Company.

A. It would not be typical, no, but it would probably be the only furniture factory that could be traced for that many years.

Q. I see. Now, looking at this piece of paper would you not say that the old discount actually used in quoting prices to the Hooker Furniture Company was 78 per cent? That figures out here, doesn't it?

A. Yes, 78.

Q. But that the amount actually charged would be some special discount off the price brought about by a 78 per cent figure, is that correct?

A. That is correct.

\* \* \* \* \*

R. J. HELMS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

\* \* \* \* \*

Cross examination.

(For Weaver Mirror Company, Inc.)

By Mr. Lee:

\* \* \* \* \*

Mr. Carlson: The Government objects to all of those exhibits going into evidence on the grounds they are completely immaterial. The letters speak for themselves. The issue here is whether there was or was not a conspiracy to fix prices. It is not whether they charged particular customers a certain amount or that the back records show as to these amounts, but whether there was a conspiracy to fix prices, Your Honor. This is merely an attempt to clutter up the record with immaterial matter to confuse the jury, mislead the jury, and bring confusion into the entire matter before them.

The Court: In dumping all of that matter in there in bulk, I cannot tell whether any part of it is material or



not. Generally speaking, Mr. Carlson, I agree with what you say. I have come to the conclusion that the issues in this case are comparatively simple and can be briefly disposed of. I am not prepared to rule out everything that they wish to offer at this time, certainly without hearing more extended argument as to the materiality of it. I will let them put it in.

If the Court happens to hold that it was immaterial, they will have to bear the cost of it.

\* \* \* \* \*

Mr. Lee: If Your Honor please, we are accused here of fixing prices of plain mirrors. We haven't dealt in them except in a de minimus quantity.

The Court: You are not accused of selling plain mirrors. You are accused of fixing the prices.

Mr. Lee: I beg your pardon, Your Honor is correct. We have not sold any plain mirrors in that time.

The Court: Yes, but you might have fixed the price of them.

Mr. Lee: Yes, but I think there would be a tendency to show that we would not go into a conspiracy to fix the price of something we didn't sell.

\* \* \* \* \*

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[fol. 810] RALPH G. BUCHAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Karp:

\* \* \* \* \*

Q. The association meeting had ended?

A. Yes, sir.

Q. Did you then leave Asheville?

A. Yes, sir.

Q. What time did you leave?

A. In the a.m., sir. I don't remember the exact time.

Q. After the telephone call with Jonas, did you call Mr. Gardiner?

A. I don't recall calling him; no, sir.

Q. Did you apprise Mr. Gardiner by telephonic communication of these discussions as to prices while you were at Asheville?

A. I testified a while ago I did; yes, sir.

\* \* \* \* \*

The Court: He is entitled to press the witness a little. The witness is a little reluctant to tell everything. He is being truthful, I think. He is not being frank.

\* \* \* \* \*

The Court: Who was Nunn? Who is John Nunn?

Mr. Gilmer: A grandson of Mr. Messer, Your Honor. That is the boy from 20 to 25.

\* \* \* \* \*

[fol. 811] By Mr. Karp:

Q. Getting back to Asheville, did you hear Hearn telephone Jonas—

Mr. Gilmer: I object.

By Mr. Karp:

Q. That he, Hearn, would like to see the mirror manufacturers get together on price?

A. I can't say that I heard him say that, no, sir.

Q. You cannot say that you heard him?

A. No.

Q. Did you or did you not hear him say that?

The Court: You do not have to answer that.

Mr. Gilmer: I object, Your Honor.

By Mr. Karp:

Q. Did you hear Mr. Hearn say anything about his going out of the mirror business and before he goes out he would like to see the mirror manufacturers get together on price?

A. I think he said that.

\* \* \* \* \*

ROBERT STROUPE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Karp:

\* \* \* \* \*  
[fol. 812] Q. Did your father tell you he had been at The Bluffs?

A. I don't know whether it was that evening he told me he had been at The Bluffs, but he told me either that night or the following night or day that he had been at The Bluffs, yes, sir.

Q. He told you that night or the following morning that he had been at The Bluffs?

Mr. Sandridge: Your Honor, he did not say that.

Mr. Karp: I am asking a question.

By Mr. Karp:

Q. He could have told you that night or the following morning, October 29, that he had been at The Bluffs?

A. It is possible he could have. I don't know when he went to The Bluffs.

Q. Did your father tell you as to what was said at the Bluffs?

A. He did tell me a little bit about it, Mr. Karp.

Q. What did he tell you?

A. He told me they almost had a free-for-all.

Q. Did he tell you what they talked about?

A. Yes, sir.

Q. What did he tell you?

A. He told me that Mr. Messer had said something about repeating his statement that he had made in my presence at Asheville, and that Mr. Jonas and Mr. Messer got in an argument, and that is about the substance of it that I clearly recall.

Q. Did he tell you that Mr. Messer had mentioned a letter?

A. Oh, yes.

Q. Did he tell you that Mr. Messer had said that he wanted everybody to send a letter or that he wouldn't send any and he would not raise the price?

A. Yes.

[fol. 813] Mr. Morison: Wait. I object, Your Honor.

The Court: Read the question.

(The question was read by the reporter.)

Mr. Morison: There is no testimony to that effect, Your Honor.

The Witness: I didn't complete my statement.

Mr. Morison: I think it is improper for him to ask the question.

The Court: I don't know. Maybe the witness will say yes, he did tell me that.

Mr. Morison: It is the purest hearsay. He is asking him what his father told him, if he did, after returning from the Bluffs. He is asking this boy who was not present at the Bluffs. He is reporting hearsay. The question, of course, is improper in any event.

The Court: You may answer the question.

The Witness: He told me that Mr. Messer said words to that effect, I believe. I don't know that the wording was exactly like that. I don't recall.

By Mr. Karp:

Q. Did your father say anything about writing a letter to the furniture trade?

A. I don't remember him saying anything about writing a letter to the trade other than the fact that he was very much against the whole thing.

Q. Was a letter written by Stroupe Mirror Company to the trade?

A. I understand there was.

Q. What was the date of that letter?

A. I am told it was October 30, 1954.

\* \* \* \* \*



[fol. 814] GRADY V. STROUPE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Karp:

\* \* \* \* \*

The Court: Mr. Stroupe, if nobody else wants to ask you any questions, I will ask you one.

The Witness: Yes, Your Honor.

The Court: I think you said that Mr. Jonas, in talking to you, said that Messer was making the rules of the game, or something to that effect.

The Witness: Your Honor, that is my recollection of it.

The Court: Is Messer a pretty big man in the industry?

The Witness: Well, yes, sir.

The Court: I mean is his company one of the big ones?

The Witness: Yes, sir; I consider it so.

The Court: Is the Lenoir Furniture Company, which is not a member of the association, a big concern?

The Witness: Yes, sir.

Mr. Whicker: Your Honor, you inadvertently said Lenoir Furniture. You meant Lenoir Mirror?

The Court: Lenoir Mirror.

The Witness: Lenoir Mirror is one of the larger ones.

The Court: That is all I want to ask.

\* \* \* \* \*

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A. G. JONAS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

[fol. 815] Cross examination.

\* \* \* \* \*

Mr. Humrickhouse: If Your Honor please, so there may not be further delay in this matter, we would like to call for the production of any statements given by this witness



to Government agents under the provisions of Section 3500 of Title 18 recently enacted.

The Court: I don't know if the witness has any written statements in his file. •

Mr. Karp: I am assuming that counsel refers to verbatim statements. What is counsel referring to?

Mr. Humrickhouse: If the Court pleases, I think Government counsel knows I am referring to statements as defined by the statute. The statute defines statements as follows:

"A written statement made by said witness and signed or otherwise adopted or approved by him, or two, a stenographic, mechanical, electrical, or other recording or transcription thereof which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement."

Mr. Karp: If Your Honor please, it would seem that the defense would have to show that there is such a statement under the law that he read.

The Court: How can they show it? If you have it, you must produce it.

Mr. Karp: We have no such statements as falling within the definition read by Mr. Humrickhouse.

Mr. Gilmer: We would like to see what kind of statement he does have, and let the Court decide that question, your Honor.

[fol. 816] The Court: He says he has no statements that are in writing or that are stenographic transcriptions or, I forget, electronic, and a whole lot of other things. There must be evidently some statement that is reduced to documentary form in some place, not a mere verbal talk to the attorney.

Mr. Humrickhouse: Certainly Mr. Karp has some reports that somebody made to him of what Mr. Jonas has said to them and that is what we want to see.

The Court: If he has that he should show it.

Mr. Humrickhouse: We want the Court to examine his file to see what he has got.

Mr. Karp: If your Honor please, are counsel calling for any notations or working papers that counsel for the Government may have made?

The Court: No, they are not.

Mr. Karp: Then I can say to the Court—

The Court: You submit your files to the Court. I will tell whether there is anything in there that they are entitled to see.

Mr. Karp: All right.

Mr. Humrickhouse: That is satisfactory to us, your Honor.

Mr. Gilmer: Give it to the Court, Mr. Karp.

Mr. Karp: I have no papers here for the Court. I can say that counsel has notes. I am assuming that counsel is not referring to Grand Jury statements.

The Court: He is not referring to the Grand Jury testimony.

Mr. Humrickhouse: Did your Honor ask a question about the Grand Jury document? We are not in this asking for the production of Grand Jury records.

The Court: That is what I understood.

Mr. Humrickhouse: That does not mean we may not ask for them later:

[fol. 817] The Court: What have you with regard to any statements made by Mr. Jonas prior to this trial? I don't assume that you are examining from memory.

Mr. Karp: I have notes. There are Grand Jury transcripts which I have analyzed. There are notes which I have, which are my own working papers, as to any interviews with witnesses called to the Grand Jury pursuant to subpoena. That is the extent of any papers that I have on the subject called for by counsel for defendants.

The Court: Any notes that you have that have been reduced to writing in any documentary form whatever that bear on the statements that this witness made to you prior to this trial these gentlemen are entitled to see.

Mr. Karp: If your Honor please, under the statute they are not entitled to see them, I may respectfully say, unless they are verbatim statements made by the witness. Any other memoranda under the provisions of the law may be submitted to the Court to determine whether or not they fall within the definition.

The Court: That is what I am trying to get you to submit.

Mr. Karp: I will be glad to submit them, your Honor. I don't have them in the courtroom. I have them somewhere around. Do they have to be submitted at this moment?

The Court: They cannot be submitted at this moment if you do not have them. But I certainly want them in the next trial day.

Mr. Karp: I will be glad to do so, your Honor.

\* \* \* \* \*

The Court: I want all the statements that the witness has given to any government agents of any sort bearing on his testimony in this case, and the facts of this case [fol. 818] produced here for your examination or my examination on the morning of the next trial day. You can defer examination until that time, if you wish.

\* \* \* \* \*

#### COLLOQUY BETWEEN COURT AND COUNSEL

Thereupon, the Court and the Counsel retired to Judge's Chambers for a conference on the record, and the following proceedings were had:

\* \* \* \* \*

Mr. Karp: I think there is enough there for the jury to determine whether or not Mr. Gordon was a participant in the conspiracy.

The Court: I don't think so. I think I would have to direct a verdict of acquittal as to him.

Mr. Humrickhouse: Yes.

The Court: Of course, it is denied as to these corporate defendants, and I assumed you expected it to be.

Mr. Humrickhouse: I did expect it to be, but I want you to know why I say so. It is not on the question of evidence. Those are the points. I mean not on the question of whether there is sufficient evidence to go to the jury. It is on the question of your Honor's limitation of the indictment and the admissibility of certain evidence and the legal matters that have been raised here that I want to make a part of the formal motion. I would like to be given an opportunity



to look at my notes on that just so I might make it in chronology.

JOHN MESSER, JR., called as a witness on behalf of Galax Mirror Company, Inc., Mount Airy Mirror Company, and J. A. Messer, Sr., being first duly sworn, testified as follows:

[fol. 819] Direct Examination.

By Mr. Morison:

Q. Now, Mr. Messer, I want to call your attention to the period that has become important in this case, and that is the date October 29, 1954. Did Galax Mirror and Mount Airy Mirror Corporation change their price on that day?

A. Yes, sir.

Q. What was the nature of that price change? It was an increase in price, was it not?

A. It was an increase.

Q. Mr. Messer, I hand you Defendant's Exhibit No. 2 and I will ask you if you recognize that letter and the signature on it?

A. Yes.

Q. Is that your father's signature?

A. Yes.

Q. Now, Mr. Messer, explain to the jury what, if you know, the purpose of that announcement of change of price was?

Mr. Karp: May I ask the dates of the letter? You showed him two letters. The first letter was what?

Mr. Morison: I have only shown him one. It is the same exhibit, Exhibit 2, January 27, 1955.

Mr. Karp: Defendants' Exhibit?

Mr. Morison: No. 2.

Mr. Karp: 1955.

The Witness: This is an increase.

[fol. 820] By Mr. Morison:

Q. This is an increase on what date?

A. January 27, 1955.

Q. On the date that this announcement purports to have been written, what was the price that you were charging—the announced price?

A. In this letter, 77.

Q. That announces a new price of 77. What price had been in effect before that?

A. 78.

Q. That was announced, as you have testified, on October 29, is that correct?

A. Is that right.

Q. Now, Mr. Messer, how did it happen that this price change—by the way, the price change from 78 to 77 is how much of an increase?

A. Five per cent.

Q. Five per cent. How does it happen that this price increase came so close on the heels of the one made around the first of November?

A. Glass was scarce, and the furniture business was good, and there was a chance for us to get more for our mirrors.

Q. Did you discuss generally this price change with your father?

A. Yes.

Q. Let me ask you this, Mr. Messer. As president of Galax, did you sell very many mirrors at that announced price?

Mr. Rogers: Which one are you talking about?

Mr. Morison: Of the January 27 announcement of 77?

The Witness: I don't think we sold but very little.

[fol. 821] By Mr. Morison:

Q. Do you know why?

A. I would say it would be competition.

Q. It was competition?

A. Yes.



Q. Explain what you mean by the competition?

A. We sent the letter out hoping to get more for our mirrors and our furniture people just balked at it, that is all. They said they could buy mirrors from other manufacturers at a cheaper price.

\* \* \* \* \*

Q. I see. I would like to come back again, Mr. Messer, to that time on October 29th when the price increase that you have stated was made in that week. Did you attend the mirror manufacturers convention at Asheville, North Carolina?

A. Yes.

Q. What other persons from Galax or Mount Airy companies attended the convention?

A. My dad and I drove down together from Galax, and Mr. Cheek came there from Mount Airy.

\* \* \* \* \*

Q. During the time that you attended this convention—when did you arrive at Asheville for the convention, by the way?

A. Sunday evening.

Q. That would be the 24th of October?

A. That is right.

Q. And you left, you said, on Tuesday, which would be the 26th of October?

A. Yes.

[fol. 822] Q. During the time that you were there, then, for those days, did you take part in any discussion of prices with the other mirror people who were there?

A. Not particularly. I think everybody was crying about prices being cheap, business was rough.

Q. Did you discuss with any other mirror people any other factor in the mirror situation which prevailed at that time?

A. Plate glass shortage.

The Court: What was the answer?

The Witness: Plate glass shortage.

By Mr. Morison:

Q. Did you engage in any discussion with any of your competitors there in which it was suggested that the mirror people should change their prices?

A. I believe that was the general discussion at the whole meeting. Everybody was talking about it.

\* \* \* \* \*

Cross Examination:

By Mr. Karp:

\* \* \* \* \*

Q. When you sent your letter of October 29, 1954, were you then announcing to the trade an increase in price for plain plate glass mirrors?

A. Yes.

Q. So that the price of plain plate glass mirrors to furniture manufacturers before October 29, 1954, was less than 78 per cent, was it?

A. That is right.

[fol. 823] Q. I mean the price was less than 78 per cent. But the discount was higher than 78 per cent, is that correct?

A. We were quoting a higher price.

Q. Then when you were at Asheville or down at Asheville, you were talking to the various mirror manufacturers and you were talking about raising the price or lowering the price? What was it?

A. We were talking about higher prices.

Q. And then your price was lower before October 29, 1954, at the time you were at Asheville?

A. That is correct.

Q. And the others were?

A. I don't know what the others were.

Q. As a matter of fact, don't you know, Mr. Messer, that prices were all over the lot before October 29, 1954?

A. I don't know whether they were all over the lot, but they were awful cheap.

Q. You figured they were cheap?

A. They were cheap.

Q. And you wanted them higher, is that right?

A. Either that or go out of business.

\* \* \* \* \*

Q. Let us take you back to October 29, 1954, discount of 78 per cent, do you recall receiving inquiries from furniture manufacturers after the October 29, 1954 letter went out, asking for better prices than 78 per cent?

A. Furniture manufacturers, no matter what our price was, were always asking for a better price.

Q. Answer the question, please.

A. I don't recall any particular instance.

Q. Do you recall the Camden Furniture Company requesting a price—strike that.

[fol. 824] In January, 1955, did you have any telephone conversation with Camden Furniture Company concerning some orders for plain plate glass mirrors?

A. I don't recall. I might have.

Q. I show you this piece of paper and ask you if it refreshes your recollection?

Mr. Morison: I would like to see it, if I could please.

(The document was handed to Mr. Morison.)

The Witness: I don't recall that.

By Mr. Karp:

Q. You don't recall it?

A. No.

Mr. Karp: I would like to have it marked for identification.

The Court: What is it?

Mr. Karp: It is a letter from a customer asking that he receive the old price because he is still manufacturing the old suites of furniture before the 78 percent went into effect.

The Court: What is the date of that?

Mr. Karp: December 28, 1954.

The Court: All right.

Mr. Karp: I am having marked as Government's Exhibit No. 91, collectively, which contain two letters, one

from Camden Furniture Company to Galax Mirror Company dated December 28, 1954, attention Mr. Messer, Jr., and a reply from Galax Mirror Company to Camden Furniture Company dated January 3, 1955.

Mr. Humrickhouse: Is the first letter dated December 28, 1954?

[fol. 825] Mr. Karp: Yes. If Your Honor please, these documents were submitted to the Grand Jury in pursuance to subpoena and I offer them in evidence.

The Witness: I didn't write that.

Mr. Morison: I object to the introduction of that letter. I don't think it has any pertinency or bearing on the question at all. It is a question of a customer writing a supplier.

Mr. Karp: It bears on the fact that the price was put into effect and was adhered to at least up to that date.

Mr. Morison: Mr. Karp, did you ask the witness whether or not he had written the letter?

Mr. Karp: He received the letter.

The Witness: I didn't answer it.

Mr. Morison: There is a reply to that letter. Did the witness reply to that letter?

Mr. Karp: Please direct your attention to the Court. Let us not have any bickering.

The Court: I think it is pertinent in view of the contention you gentlemen are making.

Mr. Morison: My point is that he has not identified the copy he has written as having been written by Mr. Messer.

The Court: Let Mr. Messer identify it.

Mr. Karp: At the beginning it was agreed that documents submitted to the Grand Jury—

The Court: Go ahead.

By Mr. Karp:

Q. Was this document sent to you and was it filed in your files?

A. It was filed in the Galax Mirror Company. I could have been out of town when that letter was written. I didn't even answer it.

Q. Are you Mr. J. A. Messer, Jr.?

A. That is exactly right.

[fol. 826] Q. Is this a carbon copy of a letter written by



A. Yes.

Q. Do you know the initials here in the left-hand corner?

A. E.H.M.

Q. Who is that?

A. That is E. H. Mayes.

Q. Whose initial is "N" there? Do you recognize that?

A. It would be one of the secretaries.

Q. Were these the documents you submitted to the Grand Jury pursuant to subpoena? Do you recall the identification numbers?

A. They are the ones my company submitted.

Q. Your company submitted?

A. Yes.

Q. Taken from the file of the company?

A. Yes.

Mr. Karp: I offer it in evidence, Your Honor.

The Court: All right.

Mr. Morison: What is the number on that?

Mr. Karp: No. 91.

Government's Exhibit No. 91, last above referred to, admitted in evidence.

Mr. Karp: I would like to read these to the Grand Jury, Your Honor.

The Court: All right.

Mr. Karp: December 28, 1954, Galax Mirror Company, Galax, Virginia, Attention Mr. Messer, Jr.

"Dear Mr. Messer, Jr.:

"We are enclosing a couple of orders for plate mirrors to be released on January and February. These mirrors are for suites that we have been manufacturing all year and you know we must sell at the regular price. Since we have to do this, we would appreciate it very [fol. 827] much if you would accept these orders at the old price since you know we cannot raise the prices on these suites we have been selling all year.

"Thanking you for all consideration, we are

"Very truly yours,

"CAMDEN FURNITURE COMPANY,

"ALLEN DAVIS,

"Purchasing Agent."



The reply, dated January 3, 1955. Camden Furniture Company, Camden, Arkansas.

"Gentlemen:

"We have your letter of December 28 in which you enclose a number of orders. You may be assured that we appreciate this business very much. Attached you will find our acknowledgment of these orders with prices as indicated.

"We regret that we are unable to comply with your wishes and fill these orders at the old prices. We are attaching hereto a copy of our letter of October 29 which is self-explanatory. The glass situation is just as bad as it ever was and we are getting very little glass.

"We, of course, want to take care of our customers as best we can. We are using that little glass we are getting to take care of our regular customers. We trust you will understand our position in this matter.

"Very truly yours,

"GALAX MIRROR COMPANY, INC.,

"E. H. MAYES,

"*Treasurer.*"

[fol. 828] Q. When you left for Asheville, did you testify that there was competition price-wise among the mirror manufacturers?

A. There was competition. In fact, we were going out of business with the competition we were in.

Q. Why didn't you raise your price before you went to Asheville under those circumstances?

A. For the simple reason, I told you, that my father and I talked about it before the Asheville meeting in the early part of October and he told me that he wanted to wait until we got to Asheville to see what was going on in the glass business.

Q. He wanted to see what the other mirror manufacturers were going to do about the price; is that correct?

A. I don't know about that. He said he wanted to know if we were going to be able to get any additional glass or not. He wanted to find out what was going on in the glass business.

Q. He also wanted to find out whether the other mirror manufacturers would go along with the increase; is that correct?

A. I don't know anything about that.

The Court: Just a minute.

Mr. Messer, you say you and your father talked about there had to be an increase in prices because you were losing so much money. That is before the Asheville meeting?

The Witness: Yes, sir.

The Court: Didn't your father also say, or didn't you also discuss that you couldn't increase prices unless the others did?

The Witness: We also talked about the fact that we were not getting glass as fast as we could and we were needing it. [fol. 829] The Court: I know that. There was a shortage of glass.

The Witness: We were not getting it as fast as other manufacturers.

The Court: When you talked about the necessity of increasing prices, didn't your father say that you would have to see what the other manufacturers would do, because one man could not increase his prices and leave himself at the mercy of the others?

The Witness: That is right.

The Court: Didn't he say that before you went to Asheville?

The Witness: That is right. Of course, it all ties together.

\* \* \* \* \*

By Mr. Karp:

Q. You got the price up on October 29, 1954, and all the other mirror manufacturers in the area got their price up, but you still had enough glass to increase the volume of business, as you testified before. You still had more glass, didn't you?

A. According to the figures that you have there, that would be right.

Q. So that regardless of the existence or non-existence of any glass shortage, you increased your price.

A. There was a definite—

Q. Is that correct?

A. There was a definite shortage of glass.

The Court: Mr. Karp, I think that line of testimony is immaterial because it doesn't make any difference what the reason was for increasing a price, if they increased in unison and it was part of an agreement. If there was a glass shortage and they increased the price, it might have been a natural result. If they combined to increase it uniformly then they entered into an illegal agreement. They might [fol. 830] have combined to reduce the price. It still would have been illegal, if they were to charge a uniform price. The gravamen of the thing is the stifling of competition.

By Mr. Karp:

Q. On October 29, 1954, you had a price of 78 off the 1950 list which prevailed for how long?

A. Until, I believe, in January.

Q. As a matter of fact, it prevailed even longer than that, didn't it?

A. I don't know how long.

Q. I show you this Exhibit No. 22 and ask you whether that exhibit was presented to the Grand Jury here in Roanoke?

A. This is the same one you showed me a while ago.

Q. And that indicates from this list that 78 prevailed for how long, or until what date?

A. According to this, from October 29 to September 16, 1955.

Q. Yes.

A. But we found another letter since then that shows it was in January.

Q. I show you this piece of paper which is another mimeographed letter of January 27, 1955, Defendants' Exhibit No. 2, and ask you whether you recognize it?

A. That is right.

Q. You recognize it as the same letter as Defendants' Exhibit No. 2?

A. I would have to read it.

Q. Yes. (The document was handed to the witness.)

A. They are the same.

Q. That letter was dated January 27, 1955?

A. Yes, sir.

Q. And refers to a 77 percent discount?

A. That is right.

[fol. 831] Q. Are you J. A. M., Jr.? Would that be you?  
J. A. Messer, Jr. Read this note on this copy.

A. It says "J.A.M., Jr., advise by telephone the second and third 55 to disregard."

Q. That is February 3, 1955, to disregard?

A. That is right.

Q. So you advised one of your customers to disregard that January 27, 1955 letter, referring to a 77 percent discount?

A. I sure did.

Q. You sure did?

A. That is right.

Q. Why was that? Were you waiting to get together with your other mirror manufacturers before you raised the price again?

Mr. Morison: I object, Your Honor.

The Court: Objection sustained.

By Mr. Karp:

Q. In any event, this 78 percent discount continued after January 27, 1955; is that correct?

A. I said we sure put that letter out and we probably told people sure to disregard that particular letter.

Redirect Examination,

By Mr. Morison:

Q. Did your father say that he wanted to withhold making an announcement until after he had gone to Asheville in order that he might get an agreement from his competitors there to go to that price?



Mr. Karp: I object, Your Honor. This is his witness.  
[fol. 832] The Court: I sustain that objection. You are trying to get the witness to make a flat contradiction of what he said a moment ago, and you are putting the words into his mouth.

Mr. Morison: All right. I stand corrected. The objection is proper.

By Mr. Morison:

Q. Mr. Messer, please relate what your father said was the reason why he would not determine the announcement of his price until he had gone to Asheville?

A. He just didn't want to do anything until we went to the Asheville meeting so he could talk to the plate glass people and see what the plate glass situation was.

Q. Did he indicate that he wanted to find out any other factors other than the shortage?

A. No.

The Court: What did the witness say to that?

The Witness: No.

The Court: Mr. Messer, you told me just a couple of minutes ago that in talking your your father before you went to the Asheville meeting he said you would have to talk to the other manufacturers to see what they were going to do because you could not raise prices by yourself. You told me that.

Mr. Morison: That is my point, Your Honor. I am trying to find out. I don't believe that is so. I think he did not understand—

The Court: It does not matter what you believe, Mr. Morison. You stop making statements like that.

Mr. Morison: All right, sir.

Mr. Karp: Your Honor, Mr. Morison is telling the witness what to say by these remarks.

The Court: I know he is. A moment ago when the witness made an answer he said, "That is right," just like a pupil properly responding to his instructor.



[fol. 833] ROBERT E. WEAVER, called as a witness on behalf of Weaver Mirror Company, Inc., being first duly sworn, testified as follows:

Direct Examination.

By Mr. Lee:

Q. What mirror manufacturers did you see at Asheville?

A. I imagine I saw practically all that was there. There was quite a number of them. I am pretty well acquainted with all the mirror manufacturers over the United States, and I guess I saw them all and talked to them.

Q. Did you discuss prices with anyone there?

A. Well, prices probably were mentioned.

Q. In what manner?

A. Most of the people were talking about having such low prices in view of the fact of the conditions of the glass industry. The price—

Q. Excuse me. Finish.

A. Prices generally were very low.

Cross Examination.

By Mr. Karp:

(For the Government:)

Q. Why didn't you raise your price in September 1954?

A. I don't recall why I didn't raise my price in September 1954.

[fol. 834] Q. Did you consider raising prices in September 1954?

A. I may have.

Q. Did you in your judgment think that the prices should be raised in September 1954?

A. Yes.

Q. But you did not raise them until after you got to the Asheville meeting, and after you talked to your competitors, is that correct?

A. Talking to my competitors had no point in me raising my prices.

Mr. Karp: If Your Honor please, I would like the witness to answer the question. He is not responsive.

Mr. Lee: If your Honor please—

Mr. Karp: I asked a specific question.

The Court: Sit down, Mr. Lee.

The witness answered your question. It has been answered a number of times before. He said he raised his prices October 29th, which was after the Asheville meeting.

By Mr. Karp:

Q. You were at the Asheville meeting and you talked to your competitors and you discussed prices, is that correct?

A. I talked to all, everybody there in the way as competitors. We are all in the same business. I talked to 25 or 30 different ones.

Q. Why did you raise it to 78 per cent?

A. Because I considered that was the price that should be put in effect. There were several prices mentioned. In fact, I had pressure put on me to go to 77, but I didn't do it.

Q. Who put the pressure on you?

A. Mr. Helms, my associate. He said he wanted 77. He didn't think 78 was enough.

[fol. 835] Q. Why didn't you raise it to 77?

A. We had a price in of 80 and that was around 10 per cent, and I thought a 10 per cent advance would be what it should be.

Q. If you raised it to 77 you would have gotten some competition pricewise from your competitors, is that correct?

A. There would have been more chance of being competition. That was one of the things. The higher price you go the more chance of competition.

Mr. Karp: That is all.

EXCERPTS FROM HEARINGS ON PRE-TRIAL MOTIONS

Hearing of May 6, 1957:

Mr. Anderson: If the Court Please, we have a motion for discovery under Rule 16, asking for the right to inspect copies of designated documents, which documents were covered by Your Honor's impounding order, January 25, 1957.

The motion I would like to ask leave to hand up to you, Sir, has been signed by Counsel for each of the defendants and Counsel for such defendants have stated that they have no objection to the motion; and in addition, Counsel for each defendant has signed a proposed Order indicating that they would consent to the provisions of the Order.

We have discussed the motion and proposed Order at length with Counsel for the government and I think that it is safe to say they have given it careful consideration, but they, of course, are present and will therefore state their position respecting both the motion and the Order.

Now may I hand these up to you, Sir?

(Handing documents to the Court)

[fol. 836] The Court: Mr. Karp, had you Gentlemen seen this list prior to this morning?

Mr. Karp: Yes, we have, Sir.

The Court: It seems like a pretty comprehensive request there? They, apparently, want everything they can possibly think of.

Mr. Karp: It is very comprehensive. However, it is set forth into designated categories, and the Order requested by the motion would permit the defendants to inspect those designated documents, from defendants and others, pursuant to the subpoenas, and those impounded by previous order of the Court.

We feel that if this is satisfactory to the Court, the government has no objection, in the interest of expediting the case.

However, we would suggest that the Order, in view of the fact that the request covers such a large area, be made to apply to the inspection of "all" documents, whether or not designated in the motion, obtained under subpoena and

thus impounded, with the exception, however, of those documents obtained from co-conspirator mirror manufacturers, who are not made defendants and which show the amount of sales made by such co-conspirator mirror manufacturers.

We prefer to have it that way and protect the rights of privacy of non defendants' business and avoid the necessity of determining whether the categories are met, since they are so broad.

We suggest, Your Honor, that if the Court does see fit to enter the Order that it be amended by adding, at the end of Page 2, after the enumeration of the documents to be made subject to inspection, the following language:

"and all other documents impounded by order of this Court, entered January 25, 1957, except those documents obtained from co-conspirator mirror manufacturers not made defendants, which show the amount of sales of such co-conspirator mirror manufacturers."

I suggest that that go at the end of Page 2, Your Honor. The Court: Mr. Anderson, you caught the effect of that, I presume?

The government objects to disclosing certain information regarding persons who may have been indicated as 'co-conspirators' but not indicted.

Mr. Anderson: That is my understanding, Your Honor, and even that—if I understand Counsel for the government?—he would accept to the proposed amendment to the proposed Order he would accept the amount of sales of plain plate glass mirrors of co-conspirator mirror manufacturers, on the ground that they might be divulging some information.

Mr. Karp: They are not parties of any consent, where other defendants are.

Mr. Anderson: Yes, that amendment is agreeable to the Pittsburgh Plate Glass Company.

Mr. Morison: Your Honor, we have one other matter which is corollary to this: this is a suggested Order, which we have shown to government Counsel, and I believe that government Counsel take the position opposing it.

The Rules, under 7(f), of course require motion for bill of particulars must be filed in ten days after the arraignment. We are in this position: the government has been, I think, quite fair in affording to us the discovery which we feel is essential, before the seven defendants who we contend have been competitors with each other intently and who have no intercourse with each other with reference to [fol. 838] what each defendant does in the realm of his business, to finding out where we are in defending this suit.

The discovery which has been granted here very probably will clear up very many things; if forced to do it now we will have to ask for it by bill of particulars. We have suggested this Order which grants us to July 1st to file such bill of particulars, if we find the need to do so, because that is 15 days after the June 15th date set by the Order you have just signed, to give us the right to inspect, copy and photograph the impounded documents; and we figure we would like to have reasonable time to compile that mass of evidence to see how far we can limit our request for particulars.

The Court: It seems to me, if you examine all the documents you have asked the right to examine and photograph and inspect, you will certainly have all the information that could possibly be furnished you by a bill of particulars.

Mr. Morison: That may be the case and if that is so, we may come to the point of saying we don't need further particulars but in the posture we are now, we don't know if that is so, and we are compelled to move for a bill of particulars, if we move, within ten days from this day, and it is our idea that there will be no prejudice to the government if we have this extension of time within which to make such motion and to the extent we are given this time we may reduce the burden on the Court and the government and our own work.

This is not a motion for bill of particulars.

This is just extension of time.

The Court: I understand that.

[fol. 839] The Court: You don't need to worry about 'delay.' This case is going to be tried on the 18th of November, bill of particulars or no bill of particulars.



I don't see any use for this Order but I don't see that any particular harm can be done by it, but I want to assure Counsel for defendants that if they come in on the 1st of July and ask for bill of particulars, it is not going to be taken, by me, as any excuse for delay of the trial of the case.

Mr. Morison: That, we understand.

The Court: If I am convinced you are entitled to a bill of particulars, which I don't think I will be with all the information you will get by virtue of this other Order, it is going to be furnished you in such time you will be ready for trial on the date set.

Mr. Morison: You are quite right: if any evidence this Court can take from our conduct we are seeking delay and not coming to issue, the Court would be perfectly justified and I know would swiftly remind us of that fact in no uncertain terms. I promise you this will be studied among Counsel and we will prepare the best way we can to defend ourselves on the date you set.

\* \* \* \* \*

The Court: I have stricken out all the Order except the first sentence and last paragraph, so that the Order now reads:

"On motion of defendants herein that an extension of time be granted to July 1, 1957 in which to move for a bill of particulars in this case.

"IT IS ORDERED that the time for defendants to move for a bill of particulars under Rule 7(f) of the Rules of Criminal Procedure is hereby extended to July 1, 1957."

\* \* \* \* \*

[fol. 840]

HEARING ON MOTIONS TO QUASH SUBPOENA DUCES TECUM  
AND FOR PRE-TRIAL INSPECTION OF SPECIFIED DOCUMENTS

—October 16, 1957

\* \* \* \* \*

Mr. Karp: Rule 17(c), what it calls for, provides specially for pre-trial inspection of this mass of documents before commencement of the trial, or at commencement of

the trial but before the party calling for the documents present them as a part of their case. That is all advance discovery.

Now Mr. Anderson's interjection, at this very moment, indicates the true purpose of these subpoenas and compromises or offered compromises. They issued a subpoena, returnable November 18th: that is the first day of the trial, which involves selection of jurors, opening statements, et cetera, and then the government's presentation.

Apparently what defendants are trying to do, and in the Order which they submit, if Your Honor Please, we felt, they could do, is to obtain advance discovery, either long in advance of trial or at least before the government presents its case, and before defendants present their defense.

That is advance discovery, which can only be obtained by Order of the Court, in the discretion of the Court.

The Court: What is your objection to presenting the documents? What sound objection do you have to make?

Mr. Karp: To advance discovery?

The Court: To have them present at the trial on November 18th, all documents which you presented to the Grand Jury as a basis for this Indictment.

Mr. Karp: Your Honor, we have no objection to having all documents which were presented to the Grand Jury available at Roanoke at the trial of this case, but we do object to the effectuation of a subpoena upon me to present [fol. 841] to Counsel for Pittsburgh Plate Glass any of such documents before the government presents its case and before defendant presents its case.

In other words, we have no objection at all to having the documents available, subject to Order of the Court, as the Court may deem appropriate, and such documents will be presented in an orderly fashion by the government; any documents which the government does not present, may be called for by the defendants when it is their turn to present their defense and they will be available, they will be submitted to them.

Now what Pittsburgh Plate Glass Company wants is to obtain all our evidence, to pry into our case before it is their turn to defend it.

The Court: They haven't said that.

What they ask for is "Production, at the trial on November 18th, of all such books, papers and documents and objects as have been presented to the Grand Jury, or are to be offered as evidence in the trial of the defendants, or any of them, under said indictment, \* \* \* :"

\*   \*   \*   \*   \*   \*   \*

The Court: Mr. Karp, it seems to me, in regard to this matter called for in the subpoena duces tecum, all the subpoena calls for is the production at the trial of all documents and papers which were submitted to the Grand Jury; and also such as you intend to offer in evidence, but of course, as you said, in the second category there, they are going to be there anyhow, if you are going to introduce them in evidence.

But this subpoena does not provide or request, as to these other documents which were submitted to the Grand Jury, any inspection prior to the trial, but can be produced at the time of the trial and the Court then can rule when they shall be submitted to Counsel for defendants.

Mr. Karp: That is perfectly all right.

[fol. 842] The Court: You might introduce some matter, some documents which had been presented to the Grand Jury; you might have other documents there which had been presented to the Grand Jury and which you did introduce at the trial; defendant, then, might call for all of those documents, with the right to inspect them and see if, for any reason, you have, to their disadvantage, omitted those particular documents. If there is anything in there, for example, you submitted to the Grand Jury contrary to testimony at the trial. But I don't, and I wouldn't, at this time agree, and I don't think the defendants at this time have asked for, and I wouldn't agree that all of the documents which you intend to present at the trial, or have been submitted to the Grand Jury should be subject to their inspection before the trial opens. I say, I wouldn't agree to that proposition. I don't think they have any right to discover what the government's case is going to be; but when you have introduced the document, of course it would be submitted to them for their inspection, even before it is introduced; but there might be others, presented before the

Grand Jury you wouldn't introduce and they should see those, to see if there is anything in there contradictory to the testimony given at the trial.

Mr. Karp: At the proper time, with the rulings of the Court.

The Court: Yes, rulings of the Court, at the time of trial they may wait something more. It seems to me that is all they are entitled to.

Mr. Karp: That, we don't object to.

Mr. Karp: Your Honor Please, with respect to the Order, in the course of this discussion you emphasized the fact that while the documents, other than these telephone tickets [fol. 843] would be available at Roanoke on the 18th, that they would not be submitted to defendants except when their case came on, or further Order of the Court—something along that line?

The Court: "on further Order of the Court." When a trial of a case starts, you can't tell, from moment to moment, how the evidence develops and when documents ought to be called for, or whether it is possible to have them produced. I am not going to commit myself right now to saying "Certainly, examine all before the trial" nor commit myself to say "Not a single document will be produced, until after the government's case." You can't tell how a witness may testify.

Mr. Humrickhouse: Won't that mean, an Order simply overruling the Motion to Quash—?

Mr. Karp: (Interrupting) I thought our Motion to Quash was granted? We have agreed to your "modification." I don't think the Order should read "overruling Motion to Quash;" merely requires submission under their modified proposal.

Mr. Humrickhouse: I suggest the Court prepare the Order.

The Court: Go ahead and say:

"Having heretofore filed Motion for Subpoena Duces Tecum, which Motion has been modified to provide for the production of those items, the Court grants production of those documents November 18th, or such

842

[fol. 860]

(Here follow 3 Photolithographs, Exhibits 26, 31 and 38)



date as the case may thereafter be begun, with the exception of thirteen telephone tickets, which I direct to be produced for inspection by Counsel for defendants not later than October 28th"—which is the date I will now set for hearing of the Motion for Continuance.

All right, Gentlemen.

\* \* \* \* \*

[fol. 844]

HEARING ON MOTION FOR CONTINUANCE—October 28, 1957

\* \* \* \* \*

Now if Your Honor Please, we know that the law is well settled; that "conspiracy" under the Sherman Act, is not dependent upon any overt act, other than the act of conspiring. The Supreme Court laid down that principle in the very early days of the Sherman Act.

The Supreme Court, in *United States v. Trenton Pottery Company et al.*, 273 U.S. 392, at Page 402, said: this was a case involving a price-fix conspiracy; and the Court said:

"The trial court instructed the jury in substance that if it found that the respondents did conspire to restrain trade as charged in the indictment, then it was immaterial whether the agreements were ever actually carried out, whether the purpose of the conspiracy was accomplished in whole or in part, or whether an effort was made to carry the object of the conspiracy into effect. The court below recognized that this charge was a correct statement of the general proposition of law that the offensive agreement or conspiracy alone, whether or not followed by efforts to carry it into effect, is a violation of the Sherman Law."

And the Supreme Court, *United States v. Socony-Vacuum Oil Co., Inc., et al.*, 310 U.S. 150, which came a little later, the Supreme Court there upheld the lower court in excluding evidence offered by the defendants, to show the stabiliza-

tion or rather, the competitive factor of prices involved in this case.

And then, *United States v. General Motors Corporation, et al.*, 121 Fed. 2nd. 376, Seventh Circuit, the Court excluded evidence of a similar nature but, this time, pertaining to [fol. 845] restraints of individual customers. The Circuit Court said:

"Proof of the conspiracy would have been sufficient to sustain a conviction, even if the conspiracy had never been carried out."

\*     \*     \*     \*     \*

The Court: Gentlemen, I examined the record in this case, various motions and actions from time to time, and analyzed the Affidavit submitted with the motion of the Pittsburgh Plate Glass, and I have made some notes, myself, with appropriate dates and actions, and I find this:

This Indictment was returned in March, the last week in March, the 26th I believe of March, and of course all the defendants knew then what they were going to do. Certainly, Pittsburgh Plate Glass knew it wasn't going—was going to plead "Not Guilty," and what was necessary for its defense, but it was not until six weeks later they made any effort at all to start about assembling this information which they say, now, is so necessary. I say 'six weeks.' It was 81 days later before they obtained Public Accountants to conduct what they call "A Preliminary Survey," and then stated, on completion of this preliminary survey—doesn't say when that was completed—Carolina, Stroupe and Virginia withdrew from the project, on the ground they were considering pleas of nolo contendere.

So even that early, it certainly should have occurred to Pittsburgh, and I am sure it did, that they wouldn't get this information from those three defendants, unless they took some steps to acquire it by legal force, subpoena duces tecum, or Motions for Discovery, or what-not.

On June 4th, Galax and Mount Airy and Pittsburgh decided to make price analyses among themselves, and although it was not stated then that they were refused access [fol. 846] to the books of the other defendants, however I presume that they were.

So then, on June 4th, at least Pittsburgh and Galax and Mount Airy knew that they were not going to get, voluntarily, from the other three defendants the information they wanted.

They realized that sufficiently, so that on June 17th and 19th they served subpoenas duces tecum on Stroupe, Carolina and Virginia. That would indicate that the information they wanted, they thought would be sufficient if it were available at the time of trial, because the subpoenas, of course, were returnable on the first day of the Term.

But although that happened, they waited until September 18th to make any motion for discovery of these documents, that they say they now have to examine before the trial.

On June 17th—July, August, September—they had served the subpoenas duces tecum, to compel the production of these documents at the trial. They knew, then, they had to use force to get them, they were not going to be delivered voluntarily and yet, they waited three months before asking for discovery and during all that time there was no suggestion to this Court of the necessity of a continuance or desirability of a continuance.

Now I presume that Pittsburgh and Galax and Mount Airy have developed all this information from among their own ranks. I don't know. They certainly have had plenty of time because the Affidavit states that "During the period from July 8th to August 20th, they had reviewed the records of Galax and Mount Airy and had obtained the desired information." So I suppose they have that.

So it relates only to the information to be gained from these other three defendants, Stroupe, Virginia and Carolina.

[fol. 847] Now as early as August 6th, the motions of those three defendants, with permission to withdraw their pleas of "Not Guilty" and enter pleas of nolo contendere, were denied. Now from that date then, all the defendants were on exactly the same footing: all standing on pleas of Not Guilty. There should have been cooperation among them—I presume there should have been—but nevertheless, apparently there was not because after waiting until September 18th, a motion was made to compel those defendants to submit to discovery of the documents and records in their possession.

Now Gentlemen, here, as late as September, in fact early in this month, October 3rd, Virginia and Carolina moved to quash subpoenas duces tecum. I don't know what the purpose was in that, when they had long ago decided to stand on pleas of Not Guilty, and I presumed they would cooperate with Pittsburgh, Mount Airy and the other defendants.

And then finally, on October 11th Stroupe, Virginia and Carolina agreed to let Pittsburgh have the data desired and withdrew their Motion to Quash the Subpoenas Duces Tecum.

Now I can't see anything in that but a very definite and plain lack of diligence on the part of these defendants in getting ready for this trial. There is no question, apparently, that there has been a complete, a very grave lack of cooperation among the defendants from the standpoint of the defendants, but the Court cannot accept that as an excuse for delaying the trial.

It is always easy for the Court to continue a case and put off that burden until some day when the case has to be tried, which will just crowd the docket, but I can see no justification in this case to continue the trial, now set for November 18th. As I say, I think the record, the affidavit itself, when you look at the dates, when things were done and lack of action on the part of the defendants, indicates [fol. 848] a very definite and marked lack of diligence in preparing for this trial.

All this information you speak of now that is so important, that fact has been known since the day the Indictment was returned and while you have known, since as long ago as June, that the information, part of the information you say was so valuable was being withheld from you by Stroupe, Virginia and Carolina, you didn't make any effort to get hold of it until three months later, motion filed September 18th, to compel, asking the Court to compel the discovery of those records in the possession of these co-defendants.

I don't know what the relation between the co-defendants has been so far as preparing for trial in this case. I am not concerned with it. But I do know defendants who are now making this motion haven't been diligent—Pittsburgh



and Mount Airy, and I believe one or other, haven't been diligent in trying to get the information, and I repeat again, I think it is a remarkable proposition that Stroupe, Carolina and Virginia should come in here at this late date, a week ago, and ask for continuance on the basis of the fact they have withheld information which the other defendants desired and the withholding of which is the basis of the motion made by Pittsburgh.

I will deny the Motion for Continuance, Gentlemen.

The Court: (Continuing) I might add here, I am not satisfied as to the materiality of the matter which you state you desire to accumulate. I presume you will present it at the trial. The Court will then have to pass on it. But certainly the record discloses very definitely, open, plain lack of diligence on the part of the defendants in the preparation for this trial.

[fol. 849]

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF VIRGINIA

Continued and Held at Roanoke on the Sixth Day  
of May, 1957

Criminal Action No. 5790

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UNITED STATES OF AMERICA,

v.

PITTSBURGH PLATE GLASS COMPANY; CAROLINA MIRROR CORPORATION; GALAX MIRROR COMPANY, INCORPORATED; MOUNT AIRY MIRROR COMPANY; STROUPE MIRROR COMPANY; VIRGINIA MIRROR COMPANY, INCORPORATED; WEAVER MIRROR COMPANY, INCORPORATED; EDD F. GARDNER, J. A. MESSER, SR. and W. A. GORDON.

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ORDER GRANTING INSPECTION OF CERTAIN DOCUMENTS—  
May 6, 1957

Defendants, Pittsburgh Plate Glass Company and W. A. Gordon, having this day filed their motion moving the Court



under Rule 16 of the Rules of Criminal Procedure for an order to permit said defendants, and each other defendant, to inspect and copy or photograph the documents heretofore impounded by Order of this Court entered January 25, 1957:

And said motion having come on to be heard this date and having been argued by counsel for Pittsburgh Plate Glass Company and W. A. Gordon and by attorneys for the United States, and the Court being of the opinion that the documents sought may be material to the preparation of the defense of the defendants, and that the request is reasonable and that, accordingly, the motion for discovery should be granted not only with respect to defendants, Pittsburgh Plate Glass Company and W. A. Gordon, but also to all defendants.

[f 350] Now Therefore, Samuel Karp, Attorney, Department of Justice, be and he is hereby ordered to permit defendants, Pittsburgh Plate Glass Company and W. A. Gordon, and each other defendant, to inspect and copy or photograph each document impounded by Order of the Court entered January 25, 1957, stating, referring or relating to:

1. List prices of plate glass mirrors;
2. Discounts from list prices of plate glass mirrors to furniture manufacturers and other classes of trade;
3. Net prices of plate glass mirrors to furniture manufacturers and other classes of trade;
4. Any contract, agreement, understanding or concerted plan of action between or among any defendant or alleged co-conspirator and any other defendant; alleged co-conspirator; or member, or representative of a member, of Mirror Manufacturers Association concerning the subject of paragraph 1, 2, or 3 above;
5. Any meeting, conversation, discussion or other communication between or among any defendant or alleged co-conspirator and any other defendant; alleged co-conspirator; or member, or representative of a

member, of Mirror Manufacturers Association concerning the subject of paragraph 1, 2, or 3 above;

6. Amount of sales of plate glass mirrors made by each corporate defendant to (a) furniture manufacturers and (b) other classes of trade during each of the years 1954 and 1955;

and all other documents impounded by Order of this Court entered January 25, 1957, except those documents obtained from co-conspirator mirror manufacturers not made defendant herein which show the volume or volumes of sales of such co-conspirator mirror manufacturers.

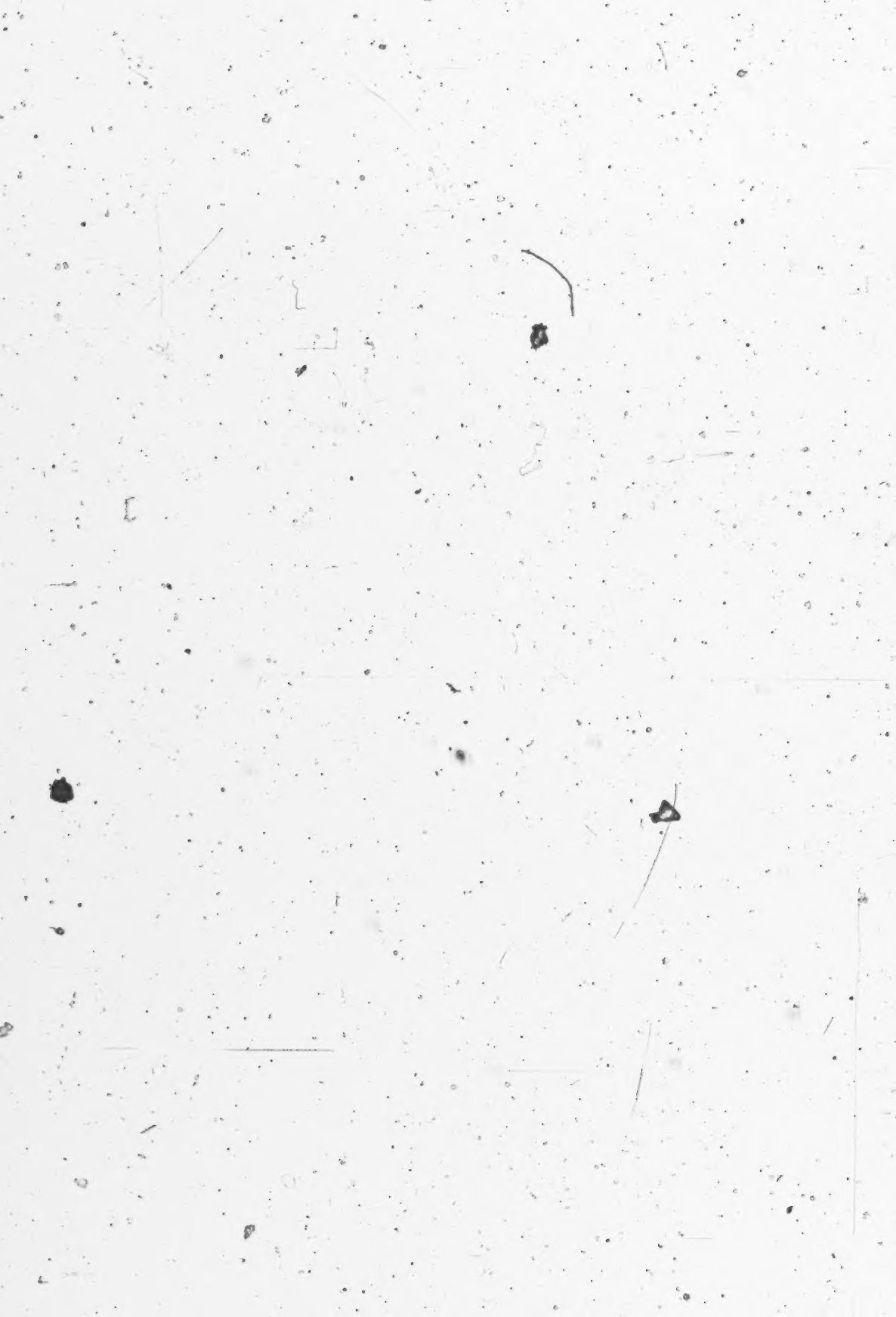
The inspection and designation of such documents for copying or photographing shall be conducted at the offices of the Department of Justice, Washington, D. C., during the period from May 15, 1957 to June 15, 1957. Such documents as shall be so designated by counsel for any defendant shall be delivered to him by counsel for the United States for the purpose of having copies, photographs or photostats made of such documents at a place satisfactory to counsel for the United States. After the copying, photographing or photostatting thereof, the documents shall then be returned to counsel for the United States within the period above-designated. The copying, photographing or photostatting of any such documents shall be at the expense of the defendant requesting such.

By the Court,

John Paul, D. J.

[fol. 852]

(Here follow 2 Photolithographs, Government  
Exhibits 11 and 17)



GOVERNMENT EXHIBIT 11

LIST PRICES

of

PLAIN MIRRORS

APRIL 1, 1950

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**CAROLINA MIRROR  
CORPORATION**

Manufacturers of  
HIGH GRADE  
MIRRORS

QUALITY  
SERVICE      COURTESY  
CO-OPERATION

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North Wilkesboro, N. C.

R15 170 Phone 718



GOVERNMENT EXHIBIT 17

Galax Mirror Company, Incorporated: List Prices of  
Plain Mirrors, April 1, 1950

LIST PRICES  
OF  
PLAIN  
MIRRORS

APRIL 1, 1950



MIRROR MANUFACTURERS  
ASSOCIATION

435 N. Michigan Ave.  
CHICAGO 11, ILL.

Published by  
ASHBY COMPANY  
423 State Street  
Erie, Pennsylvania

6-8

10-12

14-16

18-20

22-24

26-28

30-32

34-36

38-40

42-44

46-48

50-52

54-56

58-60

62-64

66-68

70-72

74-76

78-80

82-84

86-88

90-92

94-96

840

[fol. 857]

GOVERNMENT EXHIBIT 19

**GALAX MIRROR COMPANY**  
**INCORPORATED**

**MANUFACTURERS OF MIRRORS, GALAX, VIRGINIA**

**GALAX FURNITURE CO. INC.**

**GALAX MIRROR CO. INC.**

**MT. AIRY MIRROR CO. INC.**

**WEBB FURNITURE CORPORATION**

December 14, 1955.

Department of Justice,  
Room 404, United States Courthouse,  
Chicago 4, Illinois,

Attention: Mr. Earl A. Jinkinson

GENTLEMEN:

We have your letter of December 9 with reference to our letter dated December 6.

The discount to furniture manufacturers which is stated in our letter "To The Trade" dated October 29, 1954, was continuously in effect from the date of the letter until the date of the return which we made to the subpoena served on the Galax Mirror Company.

Yours very truly,

**GALAX MIRROR COMPANY, INC.**

**E. H. MAYES,**

*Treasurer.*

EHM/M

[fol. 858]

## GOVERNMENT EXHIBIT 21

July 14, 1955.

Mr. E. T. Glass,  
S. R. Hungerford Co.,  
Memphis, Tennessee.

DEAR ED:

Thanks for the order you gave me over the telephone this morning. Just as soon as we receive the paint for the backs we will get to work on it.

In case you need to figure prices in a hurry I am enclosing a book of our list prices. Our new discount is 77% off the list price and the old discount is 78%. The charge for beveling is .01¢ an inch and for edging 1/2¢ an inch.

Also, I am going to send you a list of the sizes you have used in the past at the new price and hope you favor me with a large order for the mirrors you sold at the markets.

Sincerely yours,

GALAX MIRROR COMPANY, INC.

*John.*

JJN/s

[fol. 859]

## PLAIN PLATE

Size		Old Price	New Price
		78%	77%
30	× 40.....	7.92	8.28
32	× 44.....	9.30	9.72
32	× 50.....	11.44	11.96
20	× 28.....	3.44	3.60
28	× 38.....	7.02	7.34
30	× 42.....	8.32	8.69
30	× 46.....	9.11	9.52
16	× 22.....	1.94	2.02
30	× 36.....	7.13	7.45
14	× 16.....	1.25	1.31
20	× 26.....	3.19	3.34

GOVERNMENT EXHIBIT 26

Mt. Airy Mirror Company: List Prices of Plain  
Mirrors, April 1, 1950

LIST PRICES  
of  
PLAIN MIRRORS

APRIL 1, 1950

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GOVERNMENT EXHIBIT 31

(p. 843)

LIST PRICES  
of  
PLAIN MIRRORS

APRIL 1, 1950

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Virginia Mirror Co., Inc.

Martinsville, Va.

*South's Largest Mirror  
Plant*

Mirrors, Plate Glass,  
Window Glass, Crystal  
Glass

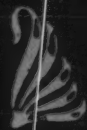


LIST PRICES  
of  
PLAIN MIRRORS

APRIL 1, 1950

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**WEAVER**  
MIRROR COMPANY



ROCKY MOUNT, VA.

PHONE 327

RL 34

[fol. 867]

## GOVERNMENT EXHIBIT 41

August 31, 1955.

Federal Grand Jury No. 9932,  
Attention: Mr. Earl A. Jinkinson,  
Room 404, United States Courthouse,  
Chicago 4, Illinois.

GENTLEMEN:

We are enclosing price changes from 1953 to date. You will note a letter written August 28, 1952, and on September 19, 1952, our customers were notified by telephone that our prices would be 79% off the 1950 list. This discount continued in effect until March 26, 1954, when our price was changed to 80% off.

On October 29, 1954, our prices went to 78% off. This discount was in effect until July 5, 1955, when it was changed to 77% off and which is also the prevailing price today.

If there is any further information you desire, we shall be glad to cooperate with you.

Yours very truly,

WEAVER MIRROR Co., INC.,

---

President.

REW:sm

[fol. 868]

(Here follow 5 Photolithographs, Government  
Exhibits 43, 61, 69, 70, and 72)



LIST PRICES  
of  
**PLAIN MIRRORS**

APRIL 1, 1950

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**STROUPE MIRROR  
COMPANY**

Plate Glass Mirrors



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Thomasville, N. C.

13 16

GOVERNMENT EXHIBIT 61

(p. 845)

# PLAIN MIRRORS

LIST PRICES

APRIL 25, 1950



PITTSBURGH  
PLATE GLASS COMPANY

L. H. HANCOCK

MANAGER

1 SOUTH HAMILTON STREET

HIGH POINT, N. C.

PHONES 3371 AND 3372

17-902-5



GOVERNMENT EXHIBIT 69

(P. 845)

Long Distance Telephone Calls		No.
		07144
Name <u>Kearney, John</u>		Room No. <u>443</u>
On Call <u>Lucie</u>		Date <u>7.6.</u>
Time		TIME
		Duration
<u>11:11</u>		<u>13 min</u>
<u>11:12</u>		<u>2:45</u>
<u>12/27/54</u>		<u>25</u>
<u>Mr. Manning (38)</u>		<u>28</u>
		<u>278</u>

MADE BY: JAMES H. HALL, JR. - WASHINGTON, D.C.      MODEL



GOVERNMENT EXHIBIT 70

(p. 845)

Long Distance Telephone Calls

07145

From London, N.A.

No. 369

City London

Area N.A.

PLATE

TIME	
Duration	Standard
13	14 min

Date 10/29/54

Rate	2.15
Time ...	22
Operator	26
Total ...	2.57

Operator M. Browning (140)

FROM THE JOHN WILLY, INC., CHICAGO, ILL.

CHARGE

CHARGE

GROVE

X70

9

GOVERNMENT EXHIBIT 72

(p. 845)

Long Distance Telephone Calls

07146

Name *Hearn*

No. *443*

City *London*

State *N.C.*

11/21/57

TIME

Original	Revised
4	2-4

10-27-57

7:14

JOHN W. GALT, INC. - BIRMINGHAM, ALA.

CHARGE

CHARGE

GROVE PARK INN

X72

[fol. 879]

## GOVERNMENT EXHIBIT 91

January 3, 1955.

Camden Furniture Company,  
Camden,  
Arkansas.

GENTLEMEN:

We have your letter of December 28, in which you enclosed a number of orders. You may be assured that we appreciate this business very much.

Attached you will find our acknowledgment of these orders with prices as indicated. We regret that we are unable to comply with your wishes and fill these orders at the old prices.

We are attaching hereto a copy of our letter of October 29 which is self explanatory. The glass situation is just as bad as it ever was, and we are getting very little glass. We, of course, want to take care of our customers as best we can. We are using what little glass we are getting to take care of our regular customers.

We trust that you understand our position in this matter.

Very truly yours,

GALAX MIRROR COMPANY, INC.,  
E. H. MAYES,  
*Treasurer.*

EHM:n  
Enclosures 4



[fol. 880]

**CAMDEN FURNITURE COMPANY****MANUFACTURERS OF BEDROOM FURNITURE  
CAMDEN, ARKANSAS**

Dec. 28, 1954.

**Galax Mirror Co.,  
Galax, Va.****Att: Mr. Messer, Jr.****DEAR MR. MESSER, JR.:**

We are enclosing a couple of orders for plate mirrors to be released in Jan. and Feb.

These mirrors are for suites that we have been manufacturing all year. And you know we must sell at the regular price. Since we have to do this we would appreciate it very much if you would accept these orders at the old price, since you know we cannot raise the prices on these suites we have been selling all year.

Thanking you for all consideration, we are,

Very truly yours,

**CAMDEN FURNITURE Co.,  
ARLENE DAVIS,  
Purchasing Agent.**

AD.



[fol. 881]

IN UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 7585.

PITTSBURGH PLATE GLASS COMPANY, J. A. MESSER, SR., GALAX  
MIRROR CO., INCORPORATED, and MT. AIRY MIRROR COM-  
PANY, Appellants,

versus

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court for  
the Western District of Virginia, at Roanoke

Argued June 2, 1958.

Before SOBELOFF, Chief Judge, and SOPER and HAYNS-  
WORTH, Circuit Judges.

Cyrus V. Anderson (Leland Hazard, James B. Henry, Jr.,  
W. P. Hazlegrove, George R. Humrickhouse, W. A. Dick-  
inson and Richard C. Packard on brief) for Appellant  
Pittsburgh Plate Glass Company; H. Graham Morison  
(Samuel K. Abrams and Robert M. Lichtman on brief)  
for Appellants Galax Mirror Company, Incorporated,  
[fol. 882] Mount Airy Mirror Company, and J. A. Messer,  
Sr.; and Daniel M. Friedman, Attorney, Department of  
Justice (Victor R. Hansen, Assistant Attorney General;  
Samuel Karp, Raymond M. Carlson and Ernest L. Folk,  
III, Attorneys, Department of Justice, and John Strick-  
ler, United States Attorney, on brief) for Appellee.

OPINION—decided October 6, 1958

SOBELOFF, Chief Judge:

The indictment in this case charged a combination and  
conspiracy in unreasonable restraint of trade to fix prices  
for the sale of plain plate glass mirrors to furniture manu-

facturers in violation of Section 1 of the Sherman Act, 26 Stat. 209 (1890), as amended. All seven corporate and two of the three individual defendants were convicted. Appellants here are three of the convicted corporations, namely, Pittsburgh Plate Glass Company ("PPG"), Galax Mirror Company, Mount Airy Mirror Company; and one of the individuals convicted, J. A. Messer, Sr., chairman of the board of the latter two companies.

### Sufficiency of the Evidence

The first question on this appeal is that raised by PPG. It contends that the evidence was insufficient to sustain the jury's verdict that PPG was a party to the conspiracy.

The proceedings in the District Court reveal the following salient facts. The corporate defendants manufacture plain plate glass mirrors in Virginia and North Carolina and sell interstate to furniture manufacturers. PPG is [fol. 883] primarily a seller of plate glass to manufacturers, who produce mirrors by applying silver and protective coatings to one side of the glass. PPG also maintains a warehouse in High Point, North Carolina, where it manufactures and sells mirrors. List prices are uniform in the industry upon the mirrors, which are standardized as to size and shape. The actual selling price, however, is at a discount from the list price. Discounts usually range from 78% and above. Thus, the lower the discount, the higher the price.

In October, 1954, the annual meeting of the Mirror Manufacturers Association was held at Asheville, North Carolina. Even though PPG was not a member of the Association, its sales manager of plate glass, W. A. Gordon, and several of his assistants, were present in Asheville at that time. Also in Asheville were the appellant Messer and representatives of three of the corporate defendants which were convicted but did not appeal: Robert Stroupe, Kenneth Hearn and Ralph C. Buchan. Also present in Asheville was A. G. Jonas, president of Lenoir Mirror Company, which was not a member of the Association. Neither the Lenoir Company nor Jonas was indicted, and Jonas was the principal prosecuting witness.

Prior to the 1954 convention, there had been a severe price war, the impact of which upon the industry was accentuated by a decline in business. By the fall of that year, however, an up-swing in price was imminent due to a shortage of plate glass coincident with an increasing demand for mirrors by furniture manufacturers.

At Asheville, Messer, meeting with Hearn, Stroupe and Buchan, indicated an intention to raise his prices on mirrors to 78% off list. They telephoned Jonas, informing him [fol. 884] that Messer wanted to raise his prices, and that everyone there was in agreement. Jonas expressed disbelief since Messer was well-known in the mirror industry as a price-cutter. Jonas requested that someone relay a message to PPG's Gordon to call him. Jonas testified that his purpose was to learn "if there was any truth in this matter." Gordon replied that "[i]n some of the rooms" he had "heard the fellows saying that they would like to get their prices increased," and although he wasn't trying to tell Jonas what he should do or not do, he thought that Jonas "ought to be getting more for the product than we were getting for" it.

The next day, Jonas, Buchan, Messer and Grady V. Stroupe (president of Stroupe Mirror Company) met at an inn called "The Bluffs" and agreed finally, in Jonas' words, "that 78 per cent was a fair price and we would go along on that basis." In his testimony Jonas stated several times that it was his impression that the increase in price hinged on his assent, and if he "didn't come along, prices wouldn't be raised." Everyone agreed to send out letters around October 29 announcing the increase. Jonas said that he would report the outcome of the meeting (sic) to PPG. Accordingly, he reached Sam Prichard, Gordon's assistant, by phone on October 29, and Jonas' testimony was that he told Prichard of the agreement reached at The Bluffs and requested him to notify his superior in PPG, Gordon. Jonas further asserted that in a phone conversation with Prichard on November 1, the latter reported that the message had been conveyed to Gordon. Prichard denied emphatically any such calls from Jonas. The telephone bills of Lenoir Mirror Company, Jonas' employer, showed calls to PPG on the two dates on which Jonas claimed to have

[fol. 885] talked to Prichard. The telephone bill also showed additional calls to PPG during November.

On November 1, 1954, PPG sent a form letter to its customers announcing a price increase by reducing the discount to 78%. The other manufacturers had sent similar letters on October 29 announcing the identical increase, except Stroupe Mirror Company, whose letter went out on October 30.

The jury having found PPG guilty of participation in the conspiracy, the applicable rule in judging the sufficiency of the record to sustain the conviction is to consider it in the light most favorable to the prosecution. We may reverse only if we find that there was no substantial evidence, on the record as a whole, to support the verdict. *Carneal v. United States*, 212 F.2d 20 (4 cir., 1954); *Garland v. United States*, 182 F.2d 801, 802 (4 cir., 1950); *Jelaza v. United States*, 179 F.2d 202, 205 (4 cir., 1950). Since conscious parallel business behavior *per se* does not establish a violation of the Sherman Act, *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, 541 (1954), affirming 201 F.2d 306 (4 cir., 1953), proof that PPG announced a price rise identical with that announced almost simultaneously by its competitors was not enough by itself to convict. However, PPG "conscious parallelism," in light of its apparent close connection with the climax of the conspiracy, reasonably permitted the jury to infer that PPG sent the letters pursuant to an agreement with some or all of the conspirators. The proposition is too elementary to require elaboration, that participation in a criminal conspiracy need not be proved by direct evidence; "a common purpose and plan may be inferred from a 'development and a collocation of circumstances.'" *Glasser v. United States*, [fol. 886] 315 U. S. 60, 80 (1942). In light of the facts enumerated, we cannot say that the conviction was without substantial basis.

#### Alleged Variance.

The defendants are aggrieved by an alleged variance between the indictment and the proof, which they assert is fatal to the Government's case. The indictment, brought in March, 1957, charged that

"11. Beginning in or about October, 1954, or prior thereto, the exact date being to the grand jurors unknown, and *continuing* thereafter, the defendants . . . have been engaged in a combination and conspiracy in unreasonable restraint of trade. . . .

"12. The aforesaid combination and conspiracy has consisted of a *continuing* agreement, understanding and concert of action among the defendants . . . to stabilize and fix prices . . . by agreeing upon and *applying* in pricing plain plate glass mirrors a uniform discount, the amount of which, from time to time, has been changed by agreement. . . .

"13. *During the period of time covered by the indictment and for the purpose of effectuating and carrying out* the aforesaid combination and conspiracy, the defendants by agreement, understanding, and concert of action *have done things* which are hereinabove charged. . . ." (Emphasis supplied.)

The jury was instructed that a "continuing" conspiracy need not be proved; that the gist of the offense was a common understanding to fix prices; and that the Government need not prove that the agreement was effectuated, but only that the defendants entered into an agreement in violation of law.

The defendants contend that the charge in the indictment can be satisfied only by proof of a continuing agreement; and further that the trial judge's instructions to the jury limiting the required proof to a showing that a conspiracy was entered into, regardless of its duration, constituted an amendment of the indictment. However, the indictment charges the single crime of conspiracy. The act of conspiring to violate the Sherman Act is an offense, and it is immaterial whether or not the purpose of the conspiracy was ever effectuated. *Nash v. United States*, 229 U.S. 373, 378 (1913), and *United States v. Trenton Potteries*, 273 U.S. 392, 402 (1927). Likewise, it need not be proved that the conspiracy continued for the duration charged in the indictment. *Cooper v. United States*, 91 F.2d 195, 198 (5 cir., 1937). Evidence that the conspiracy continued would be pertinent in this case only to indicate somewhat that the



conspiracy was actually entered into and to help determine the severity of the penalty. Since the agreement itself constituted the offense, the additional allegation in the indictment that the conspiracy was "continuing" did not set forth an essential element of the crime. Disregard of this "continuing" feature was immaterial:

### Rulings on Scope of Evidence

The defendants, however, claim prejudice from rulings restricting the testimony to a narrower range than the allegedly broad charge in the indictment. They say that their [fol. 888] efforts in preparing for trial were concentrated on defending against a charge of a conspiracy continuing up to the date of the indictment, March, 1957, and that when the trial judge ruled that the requirements of the indictment could be satisfied by proving the acts of October, 1954, and limited the evidence, they were in-effect called upon to meet a "totally different case" than they had prepared to defend.

But the defendants in no way were misled, because they knew beyond question that the events of October, 1954, would be involved at the trial. They were not diverted from this essential issue, for they were prepared to meet the Government's case as to this. In no practical sense were they prejudiced.

The defendants prepared a comprehensive study of price fluctuations in the industry from 1954 up to March, 1957, the date of the indictment, to show the lack of uniformity in prices, thereby suggesting that the conspiracy was not carried out. The trial judge, however, ruled that he would limit the testimony on both sides to July 7, 1955, the effective date of a statute increasing the maximum penalty for violations of the Sherman Act from \$5,000.00 to \$50,000.00. 69 Stat. 282 (1955). By this ruling, the court restricted the introduction of the price fluctuation reports to July, 1955. This limitation was for the protection of the defendant, to avoid the possibility of a verdict based upon acts partly before and partly after the change in the penalty provision.

Evidence for the period after July, 1955, was too remote to have significant bearing on the issue of the defendants'

participation in the conspiracy in the fall of 1954. Indeed, the defendants did not even avail themselves of the full [fol. 889] scope of the judge's ruling, which would have allowed such evidence for the period up to July, 1955. They elected to present a price fluctuation chart only for the month of November, 1954, the month immediately following the Asheville meeting and the announcements of price increases.

The Court's rulings on the scope of the permissible testimony were not erroneous, and the defendants could not conceivably have been prejudiced by them.

### Instructions to Jury

The trial Court's refusal of a requested instruction that Jonas' testimony should be received with caution in view of the fact that he was an accomplice or conspirator was not error. It has been repeatedly held that while such an admonition is generally desirable, its omission is not necessarily reversible error, *Caminetti v. United States*, 242 U.S. 470, 495 (1917), *Gormley v. United States*, 167 F.2d 454, 457 (4 cir., 1948), *Hanks v. United States*, 97 F.2d 309, 311, 312 (4 Cir., 1938), for corroboration of an accomplice's testimony is not a requisite to conviction. *Caminetti v. United States*; *supra*, *Gormley v. United States*, *supra*. Moreover, Jonas' testimony was in many respects corroborated by other witnesses.

The contention that the instructions placed the burden of proof on the defendants and intimated to the jury that the Court believed Jonas is repudiated by the record. The Judge charged the jury that they were "the sole judges of the credibility of the witness and the weight you want to give to their testimony", that he was "not vouching for [Jonas'] testimony," nor was he a "partisan of Mr. Jonas," [fol. 890] and that it was for the Government to "prove . . . guilt beyond a reasonable doubt."

### Grand Jury Testimony

After Government witness Jonas had said on cross-examination that his grand jury testimony related "to the same general subject matter" as his testimony in court, the

defendants moved for the production of the transcript of his grand jury testimony. In the absence of a preliminary showing of inconsistency between the two versions, the trial judge denied the motion. The defendants at no time requested the Judge to make a preliminary inspection of the transcript to ascertain whether there was inconsistency. On the contrary, they insist that they, and not the trial judge, are to determine the existence *vel non* of inconsistency. The defendants rely on *United States v. Rosenberg*, 245 F.2d 370 (3 cir., 1957), wherein the Court, feeling bound to apply the rule of *Jencks v. United States*, 353 U.S. 657 (1957), to grand jury testimony, held that the transcript should have been delivered directly to the defendant without prior examination by the Judge.

But whatever uncertainty may have existed shortly after the decision in *Jencks*, it is now clear that the production of grand jury testimony is not governed by *Jencks* nor by the subsequent legislation, now, 18 U.S.C.A. Sec. 3500,<sup>1</sup> but

<sup>1</sup> "Sec. 3500. *Demands for production of statements and reports of witnesses*

"(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

"(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

"(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court *in camera*. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant

[fol. 891] by the Federal Rule of Criminal Procedure 6(e), which vests discretion in the trial court. *United States v. Angelet*, decided May 19, 1958, — F.2d — 2 cir.); *United States v. Consolidated Laundries Corporation*, 159 F. Supp. 860, 862, 868 (S.D.N.Y., 1958); *United States v. Spangelet*, decided August 1, 1958, — F.2d — (2 cir.) The Jencks case dealt with the production of FBI reports. The legislative history of the recent statute negatives the notion that Congress meant to assimilate the practice with respect to grand jury testimony to that made applicable to a witness' statement to the Government. The congressional committee expressly rejected "any interpretation of the Jencks decision which would provide for production of . . . grand jury testimony . . .," and cited the Rosenberg case as a "misinterpretation" of the

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and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

"(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

"(e) The term 'statement', as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

"(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

"(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement. Added Pub.L. 85-269, Sept. 2, 1957, 71 Stat. 595."

Jencks decision. Senate Report No. 981, 85th Cong., 1 Sess. The practice which has been adopted in respect to the grand jury testimony of a witness does not contemplate the delivery of the transcript to defense counsel without any prior inspection by the Judge. *United States v. Spangelet, supra*; *United States v. H. J. K. Theatre Corporation*, 236 F.2d 502, 507, 508 (2 cir., 1956). The defendants' claim, as broadly presented, is insupportable and was properly overruled. The Court did not exceed the proper limits of the sound discretion vested in it by Rule 6(e).

For good reasons, rooted in long experience, courts have shielded grand jury proceedings from unnecessary exposure.<sup>2</sup> This tradition of the law is not to be abandoned without clear legislative direction. Section 3500 does not profess to make, and cannot properly be read to require, any alteration in the practice concerning grand jury [fol. 893] minutes. Rule 6(e) stands unaffected by recent decisions and legislation. This is not to suggest, however, that in a case of "particularized need" the secrecy of grand jury testimony may not be "lifted discretely and limitedly." *United States v. The Proctor & Gamble Company*, decided June 2, 1958, 356 U.S. 672. When the circumstances seem to the Judge appropriate, he may make such inspection without necessarily requiring a prior showing of inconsistency. *United States v. Spangelet, supra*. If the Judge finds inconsistency, and deems it in the interest of justice to bring it to the attention of the cross-examiner, he may do so. If merely inconsequential deviations are found, he is not required to provide the cross-examiner a basis for ranging over a wide area of collateral and minute detail.

Even inspection by the trial judge, it must be recognized, has serious drawbacks. It would cast a heavy burden on the trial judge and seriously interrupt the trial for the Judge to attempt to ferret out inconsistencies in a lengthy transcript; he may not be able readily to absorb and evalu-

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<sup>2</sup> The traditional reasons for the secrecy of grand jury proceedings have been frequently stated. They are succinctly set forth in *United States v. Rose*, 215 F.2d 617 (3 Cir., 1954).



ate every nuance in an extensive transcript. A further objection is that imposing this task on the Judge as regular procedure would draw him too deeply into the partisan task of preparing the cross-examination. From time to time instances may arise in which it will appear to the Judge wise and just to read the transcript to check a particular point sharply in issue, but the minute examination, during the trial, of elaborate grand jury minutes should not be expected of him.

After all, what we are dealing with is a problem of the fair scope of cross-examination, and the sound judicial discretion of the trial judge must be the chief guide. When the subject matter is one as delicate as grand jury testimony, no fixed rule can be formulated. The Judge should not be compelled to inspect in all cases; neither should he indiscriminately refuse, but he should exercise his judgment according to the circumstances. Certainly we could not approve any rule, such as contended for by the defendants here, requiring the automatic delivery of grand jury transcripts to defendants on demand.

The judgment is *Affirmed*.

[fol. 895]

IN UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 7585.

PITTSBURGH PLATE GLASS COMPANY, J. A. MESSER, SR.,  
GALAX MIRROR CO., INCORPORATED, and MT. AIRY MIRROR  
COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeals From the United States District Court for  
the Western District of Virginia.

JUDGMENT—Entered October 6, 1958

This Cause came on to be heard on the record from the United States District Court for the Western District of Virginia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from; in this cause, be, and the same is hereby, affirmed.

October 6, 1958.

Simon E. Sobeloff, Chief Judge, Fourth Circuit.

[fol. 897] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 898]

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SUPREME COURT OF THE UNITED STATES  
No. 489—October Term, 1958

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PITTSBURGH PLATE GLASS COMPANY, Petitioner,

VS.

UNITED STATES OF AMERICA

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ORDER ALLOWING CERTIORARI—December 15, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted limited to question 1 presented by the petition for the writ which reads as follows:

"1. In the trial of a federal criminal action, when the principal witness for the prosecution stated that he had testified three times before the indicting grand jury upon matters covered by his testimony at the trial, was it reversible error for the trial judge upon motion duly made to deny to the defendants for use in cross examination, inspection of the transcripts of the grand jury testimony of that witness?"

The case is transferred to the summary calendar and assigned for argument immediately following No. 451.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accom-

300  
panied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

[fol. 899]

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SUPREME COURT OF THE UNITED STATES

No. 491—October Term, 1958

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GALAX MIRROR COMPANY, INCORPORATED, MOUNT AIRY  
MIRROR COMPANY and J. A. MESSER, SR., Petitioners,

VS.

UNITED STATES OF AMERICA

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ORDER ALLOWING CERTIORARI—December 15, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted limited to question 1 presented by the petition for the writ which reads as follows:

“1. Whether the denial of defendants’ motion at the trial for production of the relevant grand jury testimony of the principal Government witness for purposes of cross-examination constituted error.”

The case is transferred to the summary calendar and assigned for argument immediately following No. 489.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.